

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

No. 2194.

755

LEWIS DUDLEY GEORGE, APPELLANT,

vs.

AZEL FORD.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JULY 22, 1910.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1910.

No. 2194.

LEWIS DUDLEY GEORGE, APPELLANT,

vs.

AZEL FORD, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

| | Original. | Print |
|---|-----------|-------|
| Caption | <i>a</i> | 1 |
| Bill of complaint..... | 1 | 1 |
| Exhibit No. 1—Minutes of first meeting of stockholders of Beaty Lumber Company..... | 25 | 14 |
| No. 2—Minutes of second meeting of stockholders.... | 32 | 17 |
| No. 3—Minutes of meeting of board of directors of Beaty Lumber Company..... | 34 | 18 |
| No. 4—Minutes of meeting of board of directors of Beaty Lumber Company at Crow, W. Va... | 39 | 20 |
| No. 5—Memorandum of agreement..... | 41 | 21 |
| No. 6—Minutes of first meeting of incorporators of the Raleigh Lumber Company..... | 43 | 22 |
| No. 7—Letter from Azel Ford to Mr. Ennis..... | 51 | 26 |
| No. 8—Letter from Azel Ford to George..... | 52 | 27 |
| No. 9—Letter from L. D. George to Azel Ford..... | 53 | 27 |
| No. 10—Capital stock | 54 | 27 |
| No. 11—Agreement | 57 | 29 |
| Demurrer.. .. | 62 | 32 |
| Decree sustaining demurrer..... | 63 | 32 |
| Amendments to original bill..... | 63 | 32 |

| | Original. | Print |
|--|-----------|-------|
| Demurrer to bill of complaint as amended | 73 | 38 |
| Decree sustaining demurrer and dismissing bill of complaint. | 74 | 38 |
| Plaintiff's note of appeal to the Court of Appeals and order for citation. | 75 | 38 |
| Citation | 76 | 39 |
| Order fixing amount of appeal bond. | 77 | 39 |
| Memorandum : Appeal bond filed | 77 | 40 |
| Directions to clerk for preparation of transcript of record. | 78 | 40 |
| Clerk's certificate | 79 | 40 |
| Addition to record per stipulation of counsel. | 80 | 41 |
| Stipulation | 81 | 41 |
| Amended bill of complaint | 82 | 42 |

In the Court of Appeals of the District of Columbia.

No. 2194.

LEWIS DUDLEY GEORGE, Appellant,
vs.
AZEL FORD.

a Supreme Court of the District of Columbia.

No. 28979. In Equity.

LEWIS DUDLEY GEORGE, Plaintiff,
vs.
AZEL FORD, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed Dec. 3, 1909.

In the Supreme Court of the District of Columbia.

No. 28979. In Equity.

LEWIS DUDLEY GEORGE, Plaintiff,
vs.
AZEL FORD, Defendant.

To the Honorable, the Justice holding a Special Term of said Court as a Court of Equity, the plaintiff respectfully states as follows:

1. That he is a citizen of the United States and the State of Virginia and resides in Caroline County in said State; that he brings this suit in his own right.

2. That the defendant is likewise a citizen of the United States;

and resides in the District of Columbia and is sued in his own right.

3. That about the year 1890, plaintiff and one B. B. Wright and J. R. Beaty entered into a partnership by the firm name of J. R. Beaty & Company for conducting a lumber business in Raleigh County, West Virginia, purchased valuable timber lands and outfit, and for several years conducted the business of manufacturing lumber and increased their holdings until the Beaty Lumber Company was formed in 1896. That on the 2nd day of June 1896, a corporation called the Beaty Lumber Company was organized under the laws of the State of West Virginia, and charter issued to it in due form; that the original incorporators of said Company were B. B. Wright for J. R. Beaty & Company, W. W. Boxley, J. C. Carpenter, the plaintiff by the name of L. D. George and the defendant, each of whom subscribed for and received and became the holder of two shares of stock at the time of the organization of the said corporation; that said corporation at the same meeting adopted certain by-laws for its government, and upon vote of its stockholders in due form increased the capital stock to the sum of \$300,000. in 3,000 shares of \$100. each, and the authorized capital stock of said Company from and after the date of said meeting was of the amount of \$300,000. in 3,000 shares of \$100. each, in accordance with the authority conferred by its charter and the vote of stockholders aforesaid. See copy of By-Laws and Minutes marked "Exhibit No. 1" herewith filed and prayed to be read as a part of this Bill. Of said authorized amount of capital stock 2187 shares or about that number had been duly subscribed for by January 6, 1897, and plaintiff is informed and believes and avers that the residue have never been subscribed for or issued.

4. The object and business of said corporation included the cutting and marketing of lumber and its principal office was located at Crow in Raleigh County, West Virginia. Both the plaintiff and the defendant were duly elected directors in said Company in the year 1896 and continued to hold office as directors until after the sale of the assets of said company to the Raleigh Lumber Company, hereinafter mentioned. The said Beaty Lumber Company acquired valuable properties by purchase of the said J. R. Beaty & Company for stock to the amount of 1131 shares in said Beaty Lumber Company to be issued to B. B. Wright, J. R. Beaty and Plaintiff. That said Beaty Lumber Company purchased of B. B. Wright a one-fourth undivided interest in a certain tract of land known as the Bond Brothers and Company's tract, to be paid for in stock to the amount of 265 shares; that it bought another one-fourth of said tract from defendant to be paid for in stock to the amount of 263 shares; and it bought the remaining half of said land from J. C. Carpenter and W. W. Boxley to be paid or in stock to the amount of 524 shares of stock, which, with the two shares held by L. D. George individually and two shares held by W. W. Boxley made up the 2187 shares subscribed for by the 6th day of January, 1897. See copy of minutes of said second meeting of stockholders filed herewith and marked "Exhibit No. 2" and prayed to be read as a part of this Bill. From subsequent minutes of the Company it

would appear that the amount of the Carpenter and Boxley stock was actually 526 and 57/100 shares instead of 524 as stated in the minutes of January 6th, 1897, and it appears from the minutes of the Beaty Lumber Company dated December 26th, 1898, that J. C. Carpenter surrendered and assigned to the Company the 526 57/100 shares of stock which were owned by him and Boxley, he having failed to pay for the land which was the consideration for the same, and this stock should have been cancelled; see copy of minutes of Directors filed herewith as "Exhibit No. 3" and prayed to be read as a part of this bill.

4 That on the 24th of January, 1899, the Beaty Lumber Company bought out the interest of J. R. Beaty in said Company for the sum of \$11,000. in addition to advances theretofore made said Beaty for which payment was made in \$10,000. of its first mortgage bonds and \$1,000. in cash; See copy of minutes of directors of January 24th, 1899, filed herewith marked "Exhibit No. 4" and prayed to be read as a part of this Bill.

That at this date, January 24th, 1899, the stock of said Company was held by B. B. Wright, the defendant, the complainant, and B. V. Boxley and Carpenter and Boxley (see exhibit No. 4) the original holdings of said parties having been increased by the purchase of the J. R. Beaty stock.

5. From the organization of said Beaty Lumber Company until January 23rd, 1900, the said B. B. Wright was the President and until some time in the year 1899 he was one of the principal stockholders in said Beaty Lumber Company; that in said year 1899, and prior to the 18th day of November, the defendant purchased from said Wright his stock in said Company. That from and after the day of the purchase of said stock by said Ford from said Wright, the defendant was the largest stockholder in said Company. Plaintiff at that time and until the sale of his interest hereinafter referred to was lawfully entitled to stock in said Company amounting to at least one-sixth of the entire outstanding and subscribed stock, in other words he was an owner of said corporation to the extent of one-sixth, and the defendant was, as plaintiff is informed and believes, and therefore alleges, the real owner of all of the residue of said stock

5 although a few shares thereof, to wit, about five shares, were held in the names of certain of his employees and relatives to qualify them as directors. Consequently said corporation, at the time of the agreement by plaintiff to sell his stock hereinbefore referred to, to wit, December 21st, 1899, was owned by the parties to this cause in the proportion of one-sixth in the plaintiff and five-sixths in the defendant. There had been however, at the date last mentioned, actually issued and delivered to plaintiff certificates for only 150 shares of stock, and he was therefore entitled to have certificates for additional shares of stock issued to him in an amount sufficient to increase his shares to one-sixth of the entire subscribed and outstanding capital stock. Plaintiff was informed and believes that certificates for said additional shares were made out ready for delivery to him, although not detached from the stock book, and that said stock book thereafter came into the possession of defend-

ant, and said certificates have never been delivered to plaintiff. Plaintiff would further state that prior to December 1899, he repeatedly asked defendant for the balance of his stock, and was told by said defendant that the balance of his, plaintiff's, stock could not be issued or delivered to plaintiff by the Company until a certain loan of \$50,000., had been repaid by the Company; that the stock was hypothecated to secure said loan. Plaintiff would state that said loan which was evidenced by an issue of bonds secured on the property of the Company by a deed of trust, was not due at the time said statements were made and would not fall due until the year 1907, as

6 will be seen from an inspection of the minutes of said Company. Plaintiff was also the owner of a one-sixth interest in a corporation known as the Glade Creek and Raleigh Railroad Company, subject to incumbrance, in which corporation defendant was also largely interested.

6. Plaintiff further states that for a long period to wit, nine months or more prior to the 21st day of December, 1899, he took no active part in the management of said Beaty Lumber Company and resided in Caroline County Virginia, a long distance from the place where its operations were carried on, which was in Raleigh County, West Virginia, and did not often visit said place of business; that defendant on the contrary spent a great part of his time, during the same period at the place of business of said company, and had in charge the actual management of the same; that plaintiff relied upon the defendant to inform him of the operations and affairs of the said Company and also as to its financial condition, and this was known to defendant. That in the latter part of the year 1899, said defendant made an appointment with the plaintiff to meet him at Richmond, Virginia, and they accordingly met in said City on or about December 21st, 1899, and had interview at which the defendant stated in substance that the Beaty Lumber Company was in a bad way financially, that it was losing ground; that its best lease hold interest (that of the timber on the lands of Logan M. Bullitt and others) was about to be wrested from it by a new company called the Raleigh Lumber Company; and that the best thing for the Beaty Lumber Company to do would be to sell out all of its assets and holdings to the said new Company; that he, defendant, would undertake to make a sale to the said company if authorized; and

7 he further represented and stated in substance to plaintiff at the time that in case the said Raleigh Lumber Company should succeed as he, the defendant, believed it would succeed, in wresting from the Beaty Lumber Company its lease of the aforesaid lands, the stock of the said Beaty Lumber Company would not be worth ten cents on the dollar, and the defendant then and there advised and strongly urged that plaintiff consent to a sale before matters grew worse. At the same interview defendant further stated in substance to plaintiff that he desired that the interest of the latter should be taken care of in the same way as his own, and that a sale should be made on the basis of exchange of stock of the Beaty Lumber Company for that of the Raleigh Lumber Company; that the latter would be worth par, and that in the opinion and belief of the

defendant the stock of that Company was worth at the time ten times the actual value per share of the Beaty Lumber Company. Referring to the aforesaid statements and representations plaintiff now avers and charges that the same were false and misleading in material respects, but that he at the time believed the same to be true, and that the defendant intended for him to reply upon the same, and that the defendant made said statements and representations fraudulently and knowing them to be false and misleading and for the purpose of inducing and persuading him to consent to a sale of his interest in said Beaty Lumber Company upon certain terms which were evidenced by a memorandum of an agreement in writing which said defendant then and there drew up and induced the plaintiff

8 to execute and deliver whereby he, the plaintiff, agreed in terms that the defendant might sell for him his interest in the Beaty Lumber Company, being a one-sixth interest in the capital stock thereof, and also a like interest in the Glade Creek and Raleigh Railroad Company, for the sum of \$2500. in cash to be paid on or before January 15th, 1900, \$2500. on or before the 15th day of May, 1900, to be evidenced by a note to be either made or indorsed by defendant, and stock to the amount of \$10,000. in the aforesaid Raleigh Lumber Company, which memorandum of agreement is dated the 21st day of December, 1899, was signed by both the plaintiff and the defendant on or about the day of its date and had appended thereto a power of attorney bearing the same date executed by plaintiff, relying on the aforesaid representations and statements of defendant, which, in terms, authorized defendant to do all things requisite and necessary to carry out a contract for the disposition of the interests of said plaintiff in accordance with said memorandum of agreement. There was also appended at the same time to the said memorandum of agreement an additional written statement which plaintiff signed, to the effect that if defendant should succeed in selling plaintiff's interest in the Beaty Lumber Company and said Glade Creek and Raleigh Railroad Company, defendant would accept \$10,000., for the amount of stock he held in the Raleigh Lumber Company, if paid within one year from January 1st, 1900, meaning thereby the stock he, plaintiff, would acquire of said Raleigh Lumber Company in case said sale agreed upon in said memorandum of agreement should be consummated

9 and stock of said Raleigh Lumber Company delivered to him accordingly. Copies of said memorandum of agreement and power of attorney and additional signed statement aforesaid were furnished your complainant by the defendant in the year 1907, after repeated efforts by your plaintiff to obtain the same from the defendant. The original of said paper was delivered on or about the day of its date to defendant and the same remains in his possession as plaintiff believes. Said copies furnished by defendant are herewith filed marked "Exhibit No. 5" and prayed to be read as a part of this Bill, and plaintiff calls for the production of the originals by defendant. Further referring to the said misrepresentations of defendant, plaintiff says that as he has since been informed and believes and hence avers the financial condition and business pros-

pects of said Beaty Lumber Company were much better than stated to him by said defendant and that the property and rights of the company were of great value, to-wit; \$300,000. over and above the encumbrance of \$50,000., all of which was well known to said defendant at the time.

7. Plaintiff further says that the defendant represented at the interview referred to in the fifth paragraph and subsequently that he was acting in the best interest of plaintiff and said Beaty Lumber Company, and gave plaintiff to understand and believe that defendant had no interest in the Raleigh Lumber Company, and that no sale by the Beaty Lumber Company to said Raleigh Lumber Company had been agreed upon, and that he proposed to attempt to make such a sale if authorized by plaintiff. Plaintiff further says
10 that soon afterwards, to wit, about the — day of January, 1900, the defendant represented to him that he had effected a sale of his, plaintiff's, interest in the Beaty Lumber Company at the price and on the terms authorized by the agreement of December 21st, 1899, and plaintiff, through a bank in Richmond, Virginia, delivered to said defendant his certificates for \$15,000. of the Beaty Lumber Company stock, and received from the defendant the consideration called for by said agreement, namely, \$10,000 in Raleigh Lumber Company stock, \$2,500. in money and \$2,500 in a note subsequently paid.

8. Plaintiff further says that at the time the several statements and representations of defendant alleged and referred to in the last two foregoing paragraphs of this Bill were made respectively, he believed the same and relied upon the good faith and fairness of the said defendant, and it was not until six years had elapsed that he discovered that he had not been treated fairly, but had been defrauded by defendant in the transfer of said stock. That the occasion of the discovery was this—Sometime in the year 1906, plaintiff was notified by George H. Smith, President of the Raleigh Lumber Company, that a deal was on foot to sell the stock of said Company to some northern capitalists for a good price, and that he should be on hand at the Company's office at Raleigh, Raleigh County, West Virginia, in case the said deal should be consummated; that plaintiff in May 1906, accompanied by his attorney met the said George H. Smith and the defendant and some of the other officers of the said Company at the office in Raleigh, West Virginia, that
11 during the negotiations plaintiff asked Mr. George H. Smith the President of the Raleigh Lumber Company about the issue and holdings of stock, and was informed that no stock had been issued to plaintiff originally and that the 100 shares of stock which stood in his name had been transferred to him by the defendant Azel Ford as a part of a very large issue of stock which had been made in the name of the defendant. Plaintiff then asked the defendant for an explanation and also about his certificates for additional shares of the Beaty Lumber Company stock which had never been issued to him, and was informed by the defendant that he, the plaintiff, had sold to him, Ford, all of his stock in the Beaty Lumber Company for the sum of \$5,000. and the 100 shares of stock

in the Raleigh Lumber Company, and that he could show him the contract which was at his office in Washington, D. C. Plaintiff, believing that he had been deceived by the said defendant, called for the minutes of the Beaty Lumber Company, and of the Raleigh Lumber Company, which were readily produced by Mr. George H. Smith, President of the Raleigh Lumber Company, and plaintiff and his attorney went over the records of said Company, and also examined the records in the Court House of Raleigh County, and found that the certificate of incorporation of the Raleigh Lumber Company was recorded November 15th, 1899, (see copy of minutes of first meeting of incorporators of said Company held November 20th, 1899, containing copy of said certificate of incorporation of said Company, and by-laws thereof, herewith filed marked Exhibit No. 6, and prayed to be read as a part of this Bill); and from the

12 minutes of said Raleigh Lumber Company and of the Beaty Lumber Company, and other sources they found further the following to be facts, namely:—that negotiations for purchase by the Raleigh Lumber Company from the said Beaty Lumber Company of the business and assets of the latter in which said defendant had participated, but of which plaintiff had no knowledge nor notice; were in progress by the 18th day of November, 1899, on which day a special meeting of the board of directors of said Beaty Lumber Company of which plaintiff had no notice or knowledge was held at Crow, West Virginia, the same being called at the instance of said defendant, at which directors' meeting the following resolution as appears from the minutes thereof was adopted, namely:

On motion of Mr. Ewart seconded by Mr. Willson it was resolved that this Company sell and transfer to the Raleigh Lumber Company all the property, Good Will and bills receivable and stock on hand in consideration of the assumption by The Raleigh Lumber Company of all outstanding indebtedness of The Beaty Lumber Company and that the officers of this Company be, and they are hereby authorized and directed to sign and acknowledge such deeds and other writings as may be necessary to carry the transfer into effect."

But four directors were present at said meeting and they were related to and connected in business with the defendant as follows, namely, Ewart, the defendant's brother-in-law (as plaintiff is informed and believes) Anderson, who was his attorney, Willson, who was his bookkeeper, and W. M. Puckett who was Cashier in his bank at Hinton, West Virginia; that notwithstanding the consideration for the said sale of all the property and assets of said Beaty Lumber Company was stated in said resolution to be the assumption by the purchasing Company of all the indebtedness of the selling Company,

13 yet the true consideration (while it doubtless included the assumption of said indebtedness) was the delivery and issuance to defendant, who in the matter of said sale appears to have acted as the owner of said Beaty Lumber Company, of a large number of shares of stock of the Raleigh Lumber Company, and it appears from the minutes of the latter Company that said defendant shortly thereafter offered to sell to said company and said Com-

pany by resolution of its directors adopted on the 29th day of November, 1899, agreed to purchase from said defendant, in consideration of 4995 shares of the capital stock of said Raleigh Lumber Company, all of the property and assets of said Beaty Lumber Company, the stock and bonds of the said Glade Creek and Raleigh Railroad Company (of which latter stock plaintiff as aforesaid owned one-sixth) and defendant's mill and lumber at Piney, West Virginia; and that said sales were consummated in accordance with said resolution of November 29th, 1899, and for the consideration therein set forth, namely, 4995 shares of stock of said Raleigh Lumber Company of the par value of \$100, each, which were issued to said defendant; the entire capital stock of said Company being \$500,000. so that the said issue of shares exhausted all but five shares of the capital stock; that on or about the 23rd day of January 1900, at a meeting of the stockholders of the said Beaty Lumber Company held at Crow, West Virginia, of which plaintiff had no notice or knowledge but at which defendant was present a resolution was passed as follows, namely:

"Resolved that the action of the Directors in selling the property of The Beaty Lumber Company to The Raleigh Lumber Company be and the same is hereby ratified, confirmed and approved."

On the same day said defendant was elected President of
14 the Beaty Lumber Company at a director's meeting which is the last director's meeting of which there is any record, and plaintiff had no notice or knowledge of said directors' meeting.

9. Until this information was derived by plaintiff from the records of the Companies, he had believed that defendant had shared in the matter of transfer of their holdings to the Raleigh Lumber Company in the same proportion as they were interested in the Beatty Lumber Company, namely in proportion of one-sixth to plaintiff and five-sixths to defendant, and he thereupon made the claim that a considerable portion of the stock issued to defendant should have been issued in his name, and he stated to the President of the Raleigh Lumber Company that he proposed to take legal action to recover so much of the stock that had been issued to defendant as he, plaintiff, could show should have been issued to him, but he was dissuaded from taking such action by representations of the President of the said Raleigh Lumber Company, namely, George H. Smith, to the effect that the Raleigh Lumber Company was on the eve of making an advantageous sale of its stock and lumber business to some northern capitalists and that any action brought at that time would result in terminating unfavorably the negotiations for said sale which were about completed, and he advised plaintiff not to bring action at that time but to allow the sale to be made, because, it was to the interest of all of the stockholders of the Raleigh Lumber Company including plaintiff; and he advised plaintiff at the same time that any action which plaintiff would bring in the premises
15 should be properly brought against the defendant for receiving the said stock and not accounting therefor, rather than against the said Company for issuing or causing to be issued said stock to defendant, and that said suit against the defendant

could be prosecuted by plaintiff as well after the sale of the stock and business of the Raleigh Lumber Company as before said sale. That your plaintiff at that time, to wit, May 1906, asked the defendant to adjust this matter and he replied that if plaintiff and his attorney would meet him in Washington he would produce the contract between him and your plaintiff and adjust matters satisfactorily. That plaintiff's attorney who resided at Bowling Green, Virginia, wrote to the defendant asking for an appointment and received the letter herewith filed dated July 27th, 1906, marked "Exhibit No. 7", and prayed to be read as a part of this bill; that plaintiff made two engagements with defendant to talk over matters in Washington, D. C., in the early part of the year 1907, both of which engagements the said defendant failed to keep; plaintiff and his attorney having made two trips to said City to keep said appointments; that the said defendant on April 11, 1907, sent the letter to plaintiff herewith filed marked "Exhibit No. 8" and asked to be read as a part of this Bill. In the meantime the deal above referred to having fallen through another deal was made on or about the 22nd day of December, 1906, with the W. M. Ritter Lumber Company whereby the stock of said Raleigh Lumber Company was transferred unto W. M. Ritter, President of the said Ritter Lumber Company, for the consideration of \$337,500., the Raleigh Lumber Company re-

16 taining its interest in the real estate and in the Glade Creek and Raleigh Railroad Company and in certain personal property which was conveyed to George H. Smith, trustee, for the benefit of the stockholders of said Raleigh Lumber Company as set forth in a duplicate contract filed herewith marked "Exhibit No. 11" and prayed to be read as a part of this Bill. That plaintiff did not object to this transfer and signed the papers leaving the matters at issue between him and the defendant to be determined later as agreed between him and said defendant; that some time later the Glade Creek and Raleigh Railroad Company was sold to the Chesapeake and Ohio Railroad Company for the sum of \$100,000., and when the officers of the Raleigh Lumber Company were in Richmond about the month of April, 1907, negotiating said sale, plaintiff and his attorney met defendant at the Jefferson Hotel in said City and asked him to produce the contract which he claimed to have had with plaintiff; that he never produced the original contract but exhibited to plaintiff the copy filed herewith as "Exhibit No. 5", which at the request of the plaintiff's attorney the defendant turned over to him; that defendant again made an appointment to meet plaintiff in Washington, D. C., which he failed to keep, which was the occasion of his writing the letter filed as "Exhibit No. 8." Thereupon plaintiff sent defendant by registered mail a letter repudiating the contract, copies of which had been furnished as aforesaid, a copy of which letter is herewith filed marked "Exhibit No. 9" and asked to be read as a part of this Bill; that the defendant

17 made no reply to said letter; but that afterwards, to wit, the — day of June 1909, at an interview between counsel for plaintiff and the said defendant, the latter was again requested on behalf of the plaintiff to account to him and at said

interview refused to make any accounting or settlement, and therefore your plaintiff is compelled to have recourse to this suit.

10. Plaintiff further states that in December, 1906, or January 1907, he obtained a copy of the stock ledger of the Raleigh Lumber Company, which is herewith filed marked "Exhibit No. 10" and prayed to be read as a part of this Bill. Plaintiff charges, from belief and information obtained from said stock ledger and from the minutes of the Raleigh Lumber Company, that on November 20th, 1899, when the Raleigh Lumber Company was organized the stock holdings were as follows:—Logan M. Bullitt, one share, T. Robb, Jr. one share, T. H. Willson, one share, F. H. Demming, one share, M. W. Puckett, one share; that on or shortly after November 29th, 1899, pursuant to a resolution adopted on that day by the Raleigh Lumber Company, the balance of the capital stock of that Company namely, 4995 shares, was issued to and in the name of the defendant Azel Ford. Your plaintiff is now informed and believes that from organization of the Raleigh Lumber Company until after the purchase of the property of the Beaty Lumber Company, the said defendant was in full control of the former Company, and that the entire matter of the purchase of the property of the Beaty Lumber Company by the Raleigh Lumber Company was negotiated and consummated by him, the defendant, or by his direction. It would fur-

18 ther appear from said stock ledger that the defendant in addition to transferring unto the plaintiff 100 shares of the total of 4995 shares issued to him as aforesaid, transferred on the 2nd day of January 1900, 2295 shares thereof unto Logan M. Bullitt, 250 shares thereof unto Thomas Robb, 150 shares thereof to one William Lang, 155 shares thereof to one T. J. Morgan, 300 shares thereof unto Harry Allen and 50 shares thereof unto one Charles F. Smith, retaining the residue of said shares namely, 1695 shares, in his own name, and that he acquired 5 shares which were held by the original subscribers, namely Bullett, Robb, Willson, Demming and Puckett, making a total of 1700 shares retained in the name of said defendant at the time said copy was certified to by the Secretary of the Raleigh Lumber Company, to wit, December 22nd, 1906, to be a true copy of the stock ledger. While the resolution hereinbefore referred to of the Raleigh Lumber Company authorizing the issue of 4995 shares of stock of that Company to the defendant refers as consideration for said issue of stock not only to the property and assets of the Beaty Lumber Company and the stock of the Glade Creek and Raleigh Railroad Company, in all of which plaintiff had a one-sixth interest as aforesaid, but also to bonds of the said Railroad Company and a mill and lumber of the defendant at Piney, West Virginia, yet the plaintiff is informed and believes that the said property and assets of the said Beaty Lumber Company in connection with the stock and control of the said Railroad Company constituted and were the principal matters and things of value in exchange for which said 4995 shares were issued to defendant; that plaintiff's said one-sixth
19 interest was of much greater value than the amount of money received by him as aforesaid, from or through the defendant, namely, \$5,000. and the 100 shares of stock in the said

Raleigh Lumber Company, issued to him as aforesaid; and he is advised, believes and avers that the defendant is liable to account to him for all of the moneys and property received by him for his own use and benefit for such of said shares of stock as he the defendant transferred as aforesaid, and for the value or proceeds of the shares of stock retained by him as aforesaid; the defendant in such accounting to be allowed all just and equitable credits by reason of property other than that in which the plaintiff was interested having been transferred to the said Raleigh Lumber Company, in part consideration of said issue of 4995 shares of stock; and the facts as to such matters being within the knowledge of the defendant he should be required to disclose the same fully in his answer. In such accounting by the defendant the plaintiff is ready and willing to be charged with the sum of \$5,000. received by him in money from or through the defendant as aforesaid together with legal interest thereon; and with the value and proceeds of the 100 shares of stock in the Raleigh Lumber Company actually issued to plaintiff as aforesaid.

11. Plaintiff further charges that when defendant as aforesaid induced complainant to execute the aforesaid agreement and power of attorney (Exhibit No. 5) he intentionally concealed from plaintiff all his knowledge of the sale which had then been already agreed upon between the two companies hereinbefore referred to and plaintiff al-

20 leges that it was the duty of defendant to inform him of the said agreement to sell and that he would not have consented to sell his interest in said Beaty Lumber Company upon the terms stated in said agreement, as defendant well knew, if the facts within the knowledge of said defendant respecting the said agreement between the two companies had been made known to him, but on the contrary would have required and demanded one-sixth of the consideration, to wit, one-sixth of the consideration which was given and received for the entire stock and property of the Beaty Lumber Company and the Glade Creek and Raleigh Railroad Company instead of \$10,000. of stock in the Raleigh Lumber Company and \$5,000. in money as stated in said agreement.

12. Plaintiff alleges that the defendant in negotiating the aforesaid deal or exchange with the Raleigh Lumber Company occupied a relation of trust towards plaintiff by reason of his being a director in and the active manager of and the owner of a majority of the stock of the Beaty Lumber Company of which plaintiff was a stockholder, and also by reason of the defendant being an agent of plaintiff to negotiate the sale of his interest in said Company to the best advantage; that plaintiff in executing the contract, a copy of which is exhibited with this bill, had the most implicit confidence in the good faith as well as the sound business judgment of the said defendant; that the said defendant made to plaintiff false representations of material facts relating to the Beaty Lumber Company, to wit, its insolvent condition, and made fraudulent concealment of his connection with the Raleigh Lumber Company, and that the sale

21 of the stock of the Beaty Lumber Company to the Raleigh Lumber Company had already been negotiated before the said contract was executed, that the representations of the

said defendant as to the *status* of the two companies was an inducing cause to the contract; that plaintiff had a right to rely on these representations and did rely on them, and was thereby induced to part with his large interest in the said Beaty Lumber Company for a grossly inadequate consideration, to wit, the sum of \$5,000. as the 100 shares of the Raleigh Lumber Company stock were already his under the terms of the sale between the Beaty Lumber Company and the Raleigh Lumber Company.

13. The aforesaid Raleigh Lumber Company having acquired the property and business of the Beaty Lumber Company entered upon and carried on a large business in cutting lumber, marketing lumber, etc., until the latter part of the year 1906, at or about which time the negotiations for the sale of the assets and stock of said company to the W. M. Ritter Lumber Company culminated in an agreement which was soon afterwards carried into effect being the sale of December 22nd, 1906, hereinbefore referred to (see paragraph eight of this Bill), whereby all the stockholders of said Raleigh Lumber Company (plaintiff who had at that time retained the 100 shares of said stock acquired by him as hereinbefore set forth and the defendant being among the stockholders) sold all of the shares of stock of said Raleigh Lumber Company, to wit, 5000 shares of \$100. each unto W. M. Ritter (president of said W. M. Ritter Lumber Company) for a consideration of \$337,500. payable partly in cash and partly in notes secured by deed of trust upon real estate etc. and

22 which agreement provided that by the sale of the stock certain personal and real property of the Raleigh Lumber Company should not pass unto the said *said* Ritter but should be retained by the said stockholders who were also permitted by said agreement to retain all of the cash in hand and in back bills and accounts receivable and other choses in action of said Raleigh Lumber Company and title to all of said retained property, real and personal, was by proper conveyances and agreements vested in one George H. Smith, of Chillicothe, Ohio, in trust for stockholders to realize upon said Raleigh Lumber Company's property and with power of sale etc. and in trust from time to time to distribute the funds received and collected by him after paying certain debts of the company, to and among the stockholders at the time of the transfer of stock unto said Ritter namely, defendant 1700 shares, plaintiff 100 shares, George H. Smith 1475 shares, T. J. Morgan, 1425 shares, Harry Allen 200 shares, C. F. Smith, 100 shares, making a total of 5000 shares, all in accordance with a contract in writing under seal executed by the stockholders and the said George H. Smith, dated the 22nd day of December, 1906, duplicate of which is herewith filed marked Plaintiff's exhibit No. 11 being the same exhibit of that number referred to in paragraph nine of this Bill.

14. Said George H. Smith, who is a non-resident and for that reason is not made a party to this Bill, accepted said trust and acting thereunder has collected and converted into money a large part of the choses in action and other property real and personal held by him as such trustee and accounted for the same to the beneficiaries

23 of said trust and distributed to and among them considerable sums of money, and the said defendant has received from

said trustee as one of said distributees large amounts and which plaintiff is advised and believes and avers defendant should be held to have received as trustee for plaintiff, and he prays that he be required to account to him and pay over to him such portion of said payments and moneys received or to be received by him from said trustee as his interest therein may appear to the Court.

15. Plaintiff further states that he executed the contract under seal of December 22nd, 1906, Exhibit No. 11 because he believed as he still believes that the sale to said Ritter therein referred to was to the interest and advantage of all of the stockholders of said Company and because he was advised and believed that by so doing he would not in any manner impair or prejudice his right to have a full settlement with and accounting by defendant, and because he relied upon the assurances of the President of the Raleigh Lumber Company, hereinbefore referred to, which were made in the interest of all of the other stockholders including the said defendant.

Wherefore the plaintiff being without adequate remedy at law, brings this suit in equity, where matters of the sort are properly cognizable and prays as follows, namely:

Prayers.

1. That the United States writ of subpoena may issue addressed to the defendant Azel Ford, commanding him to appear and true answer make to the exigencies of this Bill, but not under oath, answer to this Bill under oath being hereby expressly waived.

24 2. That the Court will pass a decree directing and requiring the defendant to account under the direction of the Court to the plaintiff for all stock and proceeds of sales of stock in the Beaty Lumber Company and in the Raleigh Lumber Company and in the Glade Creek and Raleigh Railroad Company which rightfully belonged to plaintiff, or which should have been paid or issued to him, but which came into the hands or control of the defendant, and all profits and dividends which the said defendant has received on said stock from the Raleigh Lumber Company, or George H. Smith, trustee, or from any other source; and that after allowing said defendant all just and proper credits, a decree for the balance may be rendered in favor of plaintiff together with the costs of this suit.

3. That for the purpose of this suit all necessary references to the Auditor of this Court and to any Examiner thereof may be ordered and had and all necessary accounts may be taken and stated.

4. That the plaintiff may have such other and further final and general relief as the nature of the case may require.

L. D. GEORGE.

GEO. FRANCIS WILLIAMS,
Attorney for Plaintiff.

W. E. ENNIS,
Of Counsel.

EXHIBIT No. 1.

Beaty Lumber Company.

First Meeting of Stockholders.

At a meeting of the stockholders and incorporators of the Beaty Lumber Company, held at the office of James M. Payne, in the city of Charleston, West Virginia, on the 2nd day of June, 1896.

Present:

| | | | |
|-----------------------|--------|---|--------|
| B. B. Wright | Owning | 2 | shares |
| Azel Ford | " | 2 | " |
| W. W. Boxley | " | 2 | " |
| J. C. Carpenter | " | 2 | " |
| L. D. George | " | 2 | " |

It appearing that all the stockholders and incorporators were present, and notice of this meeting being waived, on motion, B. B. Wright was called to the chair and L. D. George was chosen Secretary.

On motion the following by-laws were unanimously adopted:

By-Laws.

I. Until otherwise provided the principal office of this company shall be kept at Crow, in the County of Raleigh, State of West Va.

II. At the first meeting and each annual meeting thereafter, of the stockholders, six directors shall be elected, who shall hold their office until their successors shall be elected, unless sooner removed by the stockholders; and in event of a vacancy in office by reason of resignation or death, the same may be filled by appointment
26 by the board, which appointment may be made at any meeting of the Board at which a quorum may be present; such appointments to be for the unexpired term. Any three of the Directors present shall constitute a quorum for the transaction of business. Residence in this State shall not be necessary as a qualification for Directors.

III. As soon as convenient after their election the Board of Directors shall choose a President from their number; also a Secretary, who shall be ex-offices treasurer, who shall hold their offices until the next regular annual meeting of the Stockholders, or until their successors are elected. Vacancies in said offices shall be filled by the Board of Directors for the unexpired term.

IV. The regular annual meeting of the stockholders shall be held on the first Tuesday of June of each year, and on notice Special meetings of the stockholders may be called at any time by the President or by two Directors. It shall be sufficient notice of any regular or special meeting of the stockholders to send notice thereof in writing to each stockholder appearing upon the books of the com-

pany, by mail, to his last known address one week before the time fixed for such meeting.

27 V. The Board of Directors shall meet on June 2nd, 1896 and thereafter at the call of the President or Two Directors, and at such time and place as may be designated in such call, no business shall be transacted at the Directors' meeting unless a quorum be present, nor unless notice of the time and place of such meeting be first given to all the Directors save and except, that such business may be transacted without such notice as may be unanimously concurred in by a majority of the Directors elected such majority being present and their unanimous assent being entered of record.

VI. The corporate seal of this company shall be that of which an impression is on the margin thereof, which seal is *hear* adopted as the seal of the Company until changed by the Board of Directors and the said seal shall remain in the custody of the Secretary of the Company.

VII. At each annual meeting of the stockholders a detailed statement of the business of the Company for the preceding year shall be laid before the meeting, including a statement of the receipts and disbursements, and of the assets and liabilities of the Company, which statement shall be read and entered upon the minutes of the meeting.

VIII. The President of the Company shall be ex-officio
28 Manager and General Superintendent of the works of the Company, and he shall attend to, and discharge all the duties of such and have full charge and control of said works and of the general business of the Company, but all subject to such restrictions and limitations as the Board of Directors may from time to time impose. And he shall have, subject to the limitations aforesaid, the power to make contracts for the company in and about its business, sign the name of the Company thereto, including such deeds and writings as the Board of Directors may from time to time direct, and to acknowledge for record on behalf of the company such of said writings as are proper to be admitted to record.

He shall also have the power and authority, subject to such restrictions as may be imposed by the Board from time to time, to employ all day-laborers needed or required in the transaction of the business of the company, but this power is not to be construed to extend to the employment of officers of the company or employees upon salary.

All checks, bills, notes and drafts, and obligations of like kind for the payment of money, shall be drawn by him, but shall not be complete or binding upon the company until countersigned by the Secretary; And for his services as such President, Manager and General Superintendent he shall be entitled to a salary of \$2500.00 per annum, payable in equal monthly installments.

29 IX. The Secretary shall keep an accurate minute of the proceedings of the meetings of the stockholders and of the Board of Directors; shall countersign all checks, notes, drafts and obligations of a like kind, for the payment of money, drawn by the

President when approved by him and found correct and discharge such other duties as Secretary as the Board may from time to time impose; and as ex-officio Treasurer of the Company shall receive and pay out all moneys due to, and by, the company, respectively, upon order of the Board of Directors, or upon checks, notes, drafts etc., drawn and approved as hereinbefore provided. He shall make monthly statements on the first of each month of all sums received and paid out, also showing all liabilities of the company, and amount of goods bought and sold.

And for his services, as such secretary and ex-officio Treasurer he shall receive a salary of \$720. per annum, payable in equal monthly installments.

X. In the absence of the President, or during his incapacity, from any cause, to act, the Board of Directors may from time to time appoint a President pro tempore to discharge the duties of the President during such absence or incapacity, and during such periods such President pro tempore shall have all the powers and
30 discharge all the duties of the President unless otherwise restricted by the order of his appointment.

XI. On motion it is resolved that the capital stock of this company be, and the same is increased and fixed at \$300,000.00 to be divided into shares of the par value of one hundred dollars each.

XII. At the first and each successive annual meeting of the Board of Directors, there shall be appointed by the President two members of the said Board, who shall constitute an auditing committee, whose duty it shall be to make examinations at any, and all times, when required by the Board of Directors, or President, of the books, accounts, and transactions of the Secretary and Treasurer, and make report to the stockholder and Board of Directors at the regular annual meetings of the stockholders and Board of Directors, or whenever required by either.

XIII. On motion it is ordered that the necessary travelling expenses of Directors, in attending Special Meetings, called as herein provided, shall be paid on certificate of such Auditing Committee as may be appointed by or under the authority of the Board of Directors.

XIV. The foregoing by-laws may be amended or changed
31 at any general or Special meeting of the stockholders by a two-thirds vote of all the stock issued and outstanding, and not otherwise.

On motion the following persons were duly elected directors for the ensuing term:

B. B. Wright,
Azal Ford,
W. W. Boxley,
J. C. Carpenter,
L. D. George, and
J. R. Beaty.

On motion this stockholders' meeting is adjourned.

Second Meeting of the Stockholders.

At a special meeting of the stockholders of Beaty Lumber Company held on the sixth of January, 1897, at their office at Crow, Raleigh County, West Virginia, pursuant to a call made by the President on the twenty-fourth of December 1896, for the purpose of negotiating a loan of fifty thousand dollars (\$50,000.00) of which meeting notices have been mailed to all of the stockholders.

The President took the chair, and called the meeting to order; and directed the Secretary to read the proceedings of the last meeting. The minutes of the last meeting were read and approved.

On motion of J. C. Carpenter, and seconded by L. D. George, that a committee be appointed to ascertain how much stock is subscribed to and what portion is represented the President appointed Azel Ford and J. C. Carpenter as a Committee to ascertain how much stock is subscribed to and what portion is represented. The said committee reported as follows:

That 2187 shares of stock have been subscribed to and 2187 shares of stock are now represented in person, being as follows:

| | | |
|-----------------------|--------|-------------|
| J. R. Beaty & Co., by | | |
| B. B. Wright | owning | 1131 shares |
| L. D. George | " | 2 " |
| W. W. Boxley | " | 2 " |
| B. B. Wright | " | 265 " |
| Azel Ford | " | 263 " |
| J. C. Carpenter | " | 524 " |
| | | <hr/> |
| | | 2187 |

33 A quorum being present, the meeting was declared open for the transaction of business.

On motion by Azel Ford and seconded by J. C. Carpenter, it was resolved; that the Directors of Beaty Lumber Company be and they are hereby authorized and empowered to execute or cause to be executed negotiable bonds of this company to an amount not to exceed the sum of Fifty thousand dollars.

The said bonds are to be in such denominations, and payable at such time and place, and in such form as to said Board of Directors shall seem proper, and to bear interest not exceeding six per cent per annum, payable semi-annually and to be subject to disposition of said Board of Directors, and the same Board of Directors are authorized and empowered to execute or cause to be executed a mortgage or deed of trust upon the real and personal property now owned or hereafter acquired, or so much as said Board of Directors shall deem proper. The said mortgage or deed of Trust is to be in form and with such provisions as the said Board of Directors may approve and as prescribed by law. This resolution was unanimously adopted.

On motion by L. D. George and seconded by J. C. Carpenter the following resolution was offered: That the Board of Directors provide a sinking fund for the payment of the said mortgage or deed of trust's indebtedness at its maturity. This resolution was unanimously adopted.

On motion this meeting adjourned.

B. B. WRIGHT,
President.

F. M. BOXLEY, *Secretary.*

At a meeting of the Board of Directors of Beaty Lumber Company held at their office at Crow, Raleigh County, W. Va., on the 26th of December 1898, by call of the President of Beaty Lumber Company, the following Directors were present:

W. W. Boxley, B. B. Wright, and Azel Ford.

A quorum being present the President took the chair and called the meeting to order.

The minutes of the last meeting were read and approved.

The President then declared the meeting open for the transaction of business, and stated that the purpose of holding this meeting is to consider among other things of interest to the company the following proposition to wit:

Mr. J. C. Carpenter having made to the board a proposition embodied in a contract in the words and figures following, to-wit:

"Agreement made this 17th day of December 1898 between J. C. Carpenter of the first part, and the Beaty Lumber Company, a corporation of West Virginia, of the second part.

Whereas said Carpenter and wife by deed dated 27th July, 1896 and of record in Raleigh County Court Clerk's office in deed book "P" pages 305 and 306, conveyed with covenants of general warranty to said company certain lands, for a description of which

reference is here made to said deed, for a nominal consideration of \$5.00 and an actual consideration of 526 57/100

shares of the capital stock of said company of the par value of \$100.00 each to be delivered to said Carpenter full paid and non-assessable when the vendors lien hereinafter mentioned upon said lands conveyed as aforesaid should be satisfied and released or in installments from time to time as might seem best to the Board of Directors of said Company, none of which shares of stock have been issued and delivered to said Carpenter but all remain in the possession and control of the Company, and whereas, the said lands so conveyed to said Company was conveyed to said Carpenter by J. R. Bond, and others, by deed dated 1st June 1896, of record in said Clerk's office in deed book "P" pages 299, 300, & 301, in which deed a vendors lien was retained to secure certain deferred installments of purchase money evidenced by certain notes therein described and,

Whereas the said Carpenter has made default in the payment of a large part of the purchase money secured as aforesaid which is

now due and unpaid, and is unable to pay both the sum now due and the residue to become due hereafter, and the said Carpenter has been required by said J. R. Bond and others, and has required the said Company to cease cutting timber on said lands, which has been done, and

Whereas the said Company by reason of said stoppage of its work upon said lands has suffered damages for which it has a claim against said Carpenter, and by reason of the failure of the said Carpenter to make good the title to said land in payment for said stock, and the breach of his said general warranty, will have
36 a further claim against him.

Now therefore this agreement witnesseth:

First. That in consideration of the premises and the further consideration hereinafter required, the said Carpenter doth hereby quit-claim, assign, transfer, set over and deliver to the said Company the said 526 57/100 shares of the Capital stock of said Company, and all his right title, interest and claim in or to the same.

Second. That the said Carpenter doth hereby agree to constitute and appoint Azel Ford as his Attorney in fact to employ counsel and appear for him in any and all actions or suits brought against him alone or with others, upon the notes aforesaid or either or any of them, or to enforce the lien securing same, and to so act in such suits or actions on his, the said Carpenter's behalf, as may be for the best interests of said Company, it being understood that the lands conveyed by said Carpenter as aforesaid consist of an undivided interest in a tract, the residue of which is also owned by said Company; such counsel so employed to be paid by said company, subject however to repayment by said Carpenter under the conditions and on the terms hereinafter stated;

A copy of a power of Attorney such as said Carpenter proposes to execute and deliver to such Attorney in fact is hereto attached and made part hereof.

Third. In consideration of the premises the said Company doth hereby release the said Carpenter from any claim it may have for damages by reason of the stoppage of its work as aforesaid, and also from any claim it may now or hereafter have against
37 him for his failure to make good the title to said lands and the breach of his said general warranty.

Fourth. The said company doth also agree that in case when the said vendors lien is enforced the said lands shall bring more than is sufficient to pay and satisfy the said vendors lien, and the costs and expenses of the suit in which it is enforced, and such surplus is paid over to the company, it will after deducting from such surplus all its costs and expenses of every kind including counsel fees incurred or paid by it on its behalf, or that of said Carpenter in any and all suits or actions brought upon said notes or either of them, or to enforce the lien securing same, apply the residue to paying for its capital stock at par for said Carpenter, and the value of such residue in such stock at par will be issued and delivered to said Carpenter or his assigns.

Witness the following signatures and seals,

(Signed)

J. C. CARPENTER. [SEAL.]

Which contract has been duly executed by said Carpenter, and it appearing to the Board that said Carpenter is indebted and liable to the Company as set out in said contract and that it is for the best interest of the Company, that said proposition be accepted, upon motion it was voted to accept said proposition of said Carpenter, and the President of the Company was authorized, empowered and directed for and in the name of the Company to execute and affix the corporate seal to said contract in duplicate, retaining one copy thereof and delivering the other to said Carpenter.

38 No further business at this time to be considered on motion the meeting adjourned.

(Signed)

B. B. WRIGHT, *President*,
F. M. BOXLEY, *Secretary*.

AZEL FORD.

W. W. BOXLEY.

39

EXHIBIT No. 4.

Minutes of a meeting of the Board of Directors of the Beaty Lumber Company, duly called and held at Crow, W. Va., on the 24th day of January, 1899.

Present: Messrs. Wright, George and Ford.

The President, Mr. Wright announced that, of the stock of the company subscribed for, Certificates of said stock have been issued and delivered to the following parties for the amounts opposite their names respectively, to wit:

| | |
|-------------------------|-------------|
| Carpenter & Boxley..... | 25 shares, |
| L. D. George..... | 100 shares, |
| B. V. Boxley..... | 10 shares, |
| Azel Ford..... | 363 shares, |

The stock being fully paid for.

Mess-. Ford and George having retired from the meeting, in their absence, on motion, the action of the officers of the Company in issuing and delivering said stock, was ratified, approved and confirmed.

Mess-. Ford and George thereupon returned to the meeting.

Mr. Wright then stated that the purchase money on the undivided one-quarter of the 7021 acres of land conveyed by him to the company in part payment for stock subscribed by himself, L. D. George and J. R. Beaty had been paid except \$12,000, which said purchase money is secured by a Vendors Lien on said one-quarter interest in said land, and requested that to himself and Mr. George a part of the stock subscribed might be issued; the company holding the residue for the present as security for the discharge of the said Vendors Lien.

40 Mess. George and Wright thereupon retired from the meeting, and on motion in their absence it was voted that a certificate of stock be issued to Mr. Wright for 344 shares of the Capitol stock, and one to Mr. George for 59 shares of the

Capitol Stock of the said company; the certificate to be signed by the President and Secretary, and to be under the corporate seal of the company.

The President submitted some correspondence relative to the claim of J. R. Beaty against the company.

On motion, Resolved, that, as a compromise, this company give \$10,000 of its first Mortgage Bonds and \$1,000 in cash to the said J. R. Beaty in full settlement of his claim against this company.

On motion adjourned.

THOS. H. WILLSON, *Sec.*

B. B. WRIGHT,
Chairman.

L. D. GEORGE,
AZEL FORD,
Directors.

41

EXHIBIT No. 5.

RICHMOND, VA., *December 21st, 1899.*

Memorandum of an agreement made this 21st day of December 1899, between L. D. George of the one part and Azel Ford of the other part, Witnesseth: That the said George does hereby agree that said Ford may sell the interest of said George in the Beaty Lumber Co. of one sixth of the capital stock of said company and \$500 interest of said George in the Glade Creek & Raleigh R. R. on the following terms and for the following named amounts and full paid stock in the hereinafter named company, to wit: \$2500.00 cash on or before January 15th, 1900, \$2500 on or before May 15th, 1900, which sum must be represented by note to be either made by or indorsed by said Ford, and stock full paid at par to the amount of Ten Thousand (\$10,000) Dollars in the Raleigh Lumber Company, which Company has a lease under which it will manufacture and sell the timber on the property controlled by the Raleigh Coal Land Association which property lies on Piney Creek in Raleigh County, W. Va., and particularly described in said lease, amounting in area from 25 to 30 thousand acres.

It is understood that if the above named payments are not made on or before the 15th January 1900, this agreement to become null and void.

Witness our hands and seals this 21st day of December, 1899.

(Signed)

L. D. GEORGE. [SEAL.]

(Signed)

AZEL FORD. [SEAL.]

A true copy from the original.

E. C. WHITE.

42

RICHMOND, *Dec. 21, 1899.*

I hereby appoint Azel Ford my attorney in fact to do all things requisite and necessary to carry out a contract for the disposition of

certain interests owned by me as set out in said writing dated 21st of December, 1899.

Witness my hand and seal this the 21st day of December, 1899.
(Signed) L. D. GEORGE. [SEAL.]

Should Azel Ford succeed in carrying out an agreement for the sale of my interests in the Beaty Lumber Company and the Glade Creek & Raleigh R. R. Co. I hereby agree to take \$10,000.00 for the amount of stock I hold in the Raleigh Lumber Company, provided he secures me this amount in cash within one year with interest from Jan. 15th, 1900.

Witness my hand and seal this 21st day of December, 1899.
(Signed) L. D. GEORGE.

A true copy from the original.

E. C. WHITE.

EXHIBIT No. 6.

PHILADELPHIA, PENN., Nov. 20, 1899.

Minutes of the first meeting of the Incorporators of the Raleigh Lumber Company (incorporated under the laws of the State of West Virginia) held on the twentieth day of November, 1899 at 1 P. M. at Philadelphia in the State of Pennsylvania, for the completion of the organization of the Company.

Present: Messrs. Bullitt, Thomas Robb, Jr. and Thos. H. Willson.

On motion Mr. Logan M. Bullitt was made Chairman, and Mr. Thos. H. Willson, Secretary of the meeting.

On motion, the Secretary read the call for the meeting which was ordered spread upon the minutes.

Call for Meeting.

We, the undersigned, being all the corporators and stockholders of the Raleigh Lumber Company, a corporation organized under the laws of West Virginia by virtue of a certificate of incorporation issued by Secretary of State of West Virginia, dated the 15th day of November, 1899, do hereby waive the provisions of Section 15, of Chapter 54, of the Code of West Virginia, as to the time of holding the first meeting of the corporators and stockholders of said Company, and do hereby consent and agree that the first meeting of said

44 corporators and stockholders may and shall be held at Philadelphia, Pennsylvania, on the 20th day of November, 1899, for the purpose of electing a Board of Directors, making by-laws and transacting any other business which may lawfully be done by the said stockholders in general meeting.

Witness our hands this 15th day of November, 1899.

LOGAN M. BULLITT.
THOMAS ROBB, JR.
THOMAS H. WILLSON.
F. H. DENNING.
W. M. PUCKETT.

The Secretary then read the agreement for the formation of the Company and the certificate of Incorporation issued by the Secretary of State of West Virginia, which upon motion was ordered spread upon the minutes which is done as follows:

Certificate of Incorporation.

State of West Virginia.

Raleigh Lumber Company.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, hereby certify that an agreement, duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which Agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of Raleigh Lumber Company. For the purpose of owning, leasing and operating timber, coal and other lands; manufacturing, shipping and selling lumber and coal and the products thereof; owning, leasing, and operating such lines of steam or other railroads, tramways, boats or other methods of transportation for the purpose of conducting said lumber and coal business; of conducting a
45 general merchandise business and owning stocks and bonds of other corporations. Which corporation shall keep its principal office or place of business at Raleigh, in the County of Raleigh and State of West Virginia, and is to expire on the first day of January 1949.

And for the purpose of forming the said corporation, we have subscribed the sum of Five Hundred Dollars to the Capital thereof, and have paid in on said subscriptions the sum of Five Hundred Dollars, and desire the privilege of increasing the said Capital, by the sale of additional shares from time to time, to One Million Dollars in all. The Capital so subscribed is divided into shares of One Hundred Dollars each, which are held by the undersigned respectively, as follows, that is to say:

| Names. | Residence. | No. of shares. |
|------------------------|--------------------|----------------|
| Logan M. Bullitt..... | Phila., Penna..... | 1 |
| Thomas Robb, Jr..... | “ “ | 1 |
| Thomas H. Willson..... | “ “ | 1 |
| F. H. Denning..... | Hinton, W. Va..... | 1 |
| W. M. Puckett..... | “ “ “ | 1 |

And the Capital to be hereafter sold is to be divided into Shares of the like amount.

Given under our hands, this 23rd day of October, 1899.

LOGAN M. BULLITT.
THOMAS ROBB, JR.
THOMAS H. WILLSON.
F. H. DENNING.
W. M. PUCKETT.

Wherefore, The corporators named in the said Agreement, and
who have signed the same, and their successors and assigns,
46 are hereby declared to be from this date until the First day
of January, nineteen hundred and forty nine, a Corporation
by the name and for the purposes set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the
City of Charleston this Fifteenth day of November Eighteen Hun-
dred and ninety nine.

[SEAL.]

(Stamp.)

WM. M. O. DAWSON,
Secretary of State.

On motion the following By-Laws were adopted as the By-Laws
of this Company:—

By-Laws.

Article I.

SEC. 1. The Board of Directors shall consist of Five members,
each one of whom shall be the owner of at least one share of stock.
They shall be elected by ballot at the Annual Meeting of Stockhold-
ers, and shall hold office for one year and until their successors are
elected and qualified, and need not be residents of the State of West
Virginia.

SEC. 2. The stockholders in any meeting may remove any Di-
rector, but any vacancy occurring from any other cause may be
filled by the Board until the next annual meeting.

SEC. 3. The Board of Directors shall have full power to do or cause
to be done all things needful for the conduct of the business of the
corporation. They shall have power to establish such rules
47 and regulations for the conduct of business from time to time,
to alter and amend the same as to them shall seem proper.

Article II.

SEC. 1. The officers of the Company shall consist of a President,
a Secretary and a Treasurer, the latter two offices may be held by the
same person. The officers shall be elected by the Board of Directors
at its first meeting after the Annual meeting of Stockholders in each
year and they shall hold office for one year, or until their succes-
sors are duly elected and qualified. The Board of Directors shall
have full power to appoint such other officers and agents as they
shall deem desirable.

SEC. 2. The Board of Directors shall have power to delegate from
time to time such authority as they may deem advisable to any mem-
ber or members of the Board acting as Committee, in order that the
business of the Company may be transacted with dispatch. The
President shall be ex-officio a member of all committees.

SEC. 3. The regular meeting of the Board of Directors shall be
held on the last Thursday in each month and special meetings may
be called from time to time by the President or Secretary, or any
two members of the Board, by giving twenty-four hours written

notice of such meeting to each member of the Board. Three members of the Board shall constitute a quorum for the transaction of business at any meeting.

Article III.

SEC. 1. The principal office of the Company in West Virginia shall be at Raleigh Court House, Raleigh County, West Virginia, and the principal office outside the State of West Virginia, 48 shall be in the City of Philadelphia, State of Pennsylvania.

SEC. 2. The Annual Meeting of the Stockholders shall be held at the principal office of the Company in Philadelphia, Pennsylvania, on the third Monday of June in each year, or on such other day as the Stockholders may prescribe by resolution adopted at any annual meeting to take effect at the next annual meeting. Notice of the annual meeting shall be given by mailing a written notice stating the time and place of such meeting to each stockholder two weeks previous to said meeting.

SEC. 3. At all meetings of Stockholders a majority in value shall constitute a quorum.

SEC. 4. Special meetings of stockholders may be called from time to time by the Board of Directors or by Stockholders representing one-fourth in value of the total stock, by giving the same notice as required for the Annual meeting. Notices of such special meetings shall set forth the purpose for which they are called and only such business shall be transacted as is specified in the notice.

SEC. 5. At all meetings of the Stockholders each stockholder shall be entitled to one vote for each share of stock owned by him and may vote by proxy and the holder of such proxy need not be a stockholder.

Article IV.

SEC. 1. The order of business shall be as follows:

1. Reading of the minutes of previous meetings.
2. Reports of Committees.
3. Reports of Officers.
- 49 4. Unfinished business.

Article V.

SEC. 1. Certificates of stock shall be issued to the Stockholders and transfers of them made by the Secretary when required. These certificates shall be signed by the President, authenticated by the seal of the Company and countersigned by the Secretary, and may be registered if so ordered by the Board of Directors. They shall be of form following:

Number —.

Shares —.

This certifies that ——— the owner of — shares of the Capital Stock of the ——— full paid and not liable to further assessments, transferable only on the books of the Company in person or by Attorney on surrender of this Certificate.

Witness the Corporate seal of the said Company and the signatures of the President and Secretary at Philadelphia, Pa., this — day of —, 189—.

President.

Secretary.

Article VI.

SEC. 1. The seal of this corporation shall be as follows:
(Seal.)

Article VII.

SEC. 1. Amendments or alterations in these by-laws may be made by the Stockholders at any special or regular meeting by stock
50 vote of two-thirds of the stockholders present.

On motion it was: Resolved that the officers and directors are hereby authorized, empowered and directed to issue and sell additional stock of this Company so that the total Capital shall be not more than 5,000 shares as in their discretion may seem best, and are hereby authorized to make such portion of these shares, preferred stock as may be deemed advisable.

On motion Resolved That the Board of Directors be and they are hereby authorized, empowered and directed to make and execute a lease of the timber on lands of the various companies controlled by the Raleigh Coal Land Association upon such terms and conditions as to them may seem best.

Upon motion to proceed to the election of five Directors to serve until the next annual meeting, Messrs. Logan M. Bullitt, Thos. Robb, Jr., Thos. H. Willson, W. M. Puckett and F. H. Denning were elected and instructed to hold a meeting immediately upon the adjournment of this meeting.

THOMAS H. WILLSON,
Secretary.

LOGAN M. BULLITT,
Chairman.

MT. MORRIS, N. Y., 27th July, 1906.

MY DEAR MR. ENNIS: Your letter of the 10th inst. has duly reached me at the farm, near above town. Am on vacation now and will hardly get back to Washington before mid. of Sept. I regret exceedingly the delay. I beg to say that I have the contract about which I told you. I also found the minute book of the Beaty L'b'r Co. which has the matter in regard to stock each was to have fully set out and all the parties in interest have subscribed to them. I felt all along that there should be and was such a record. And it is needless for me to say to you how glad I was to be able to find this

record of the transactions. This together with the contract, and in fact either one will in my humble judgment convince Mr. George that so far as our negotiations are concerned, they were fair and business like between us.

Won't you please to write him to the effect that you have heard from me, and that I claim to be able to show him and you.

Yours truly,

AZEL FORD.

52

EXHIBIT No. 8.

Azel Ford, 200 Bond Building.

WASHINGTON, D. C., *Ap'l 11"*, 1907.

MY DEAR GEORGE: I regret very much having disappointed you in not being here when you came to the city, and soon as I get back from Milwaukee will make a date with you and you can come at my expense. Want you to look at a piece timber about the 1st May. Will take you about 2 days. Advise if you can.

Yours truly,

AZEL FORD.

53

EXHIBIT No. 9.

PENOLA, VA., *May 20th*, 1907.

Mr. Azel Ford, Washington, D. C.

DEAR SIR: Upon an inspection of the copies of the contracts which you recently furnished me in Richmond, for the sale of my 1/6 interest in the Beaty Lumber Company, I find that you were appointed my agent to sell the same, and that it was not a sale to you, as you have heretofore claimed, and from your statements it appears that all of my interest in the Beaty Lumber Company was transferred to you.

I hereby notify you that I repudiate the sale, and hereby offer to refund to you what you paid for the same, with interest.

Yours truly,

L. D. GEORGE.

54

EXHIBIT No. 10.

Capital Stock.

| | DR. | | | | CR. | | |
|-----------------------|-----|-------|---------|-------|-----|-------|---------|
| 1899. | | No. | No. | Date. | | No. | No. |
| Page 1. | | cert. | shares. | | | cert. | shares. |
| Nov. 20th. | | | | | | | |
| Logan M. Bullitt..... | 1 | | 1 | | | | |
| T. Robb, Jr..... | 2 | | 1 | | | | |
| T. H. Willson..... | 3 | | 1 | | | | |
| F. H. Denning..... | 4 | | 1 | | | | |
| W. M. Puckett..... | 5 | | 1 | | | | |
| Azel Ford | 6 | | 4995 | | | | |

| | | | | |
|----------------------|-------------------|------|-----------------------------|--------|
| Page 2. | Logan M. Bullitt. | | | |
| May 11th. | | | | |
| L. M. Bullitt..... | 7 | 2295 | Nov. 20. Capital stock..... | 1 1 |
| T. J. Morgan..... | 20 & 21 | 1000 | Jan'y 2, 1900. | |
| T. J. Morgan..... | 25 | 95 | Azel Ford | 7 2295 |
| Geo. H. Smith | 22 | 500 | May 11th. | |
| Geo. H. Smith | 23 | 500 | L. M. Bullitt..... | 20 500 |
| Geo. H. Smith | 24 | 200 | | 21 500 |
| Azel Ford shares.... | 1 | 1 | Cert. # 25 | 22 500 |
| | | | 4496 | 23 500 |
| | | | 95 | 24 200 |
| | | 4591 | | 4591 |

| | | | | | | | |
|---------------------------------------|--|--|--|---|--|--|--|
| | | | | Thos. Robb, Jr. | | | |
| Page 3. | | | | Thos. Robb, Jr. | | | |
| Azel Ford “ 1 2 | | | | 1 Nov. 20. Capital stock..... 2 1 | | | |
| Page 4. | | | | Thomas H. Willson. | | | |
| Azel Ford “ 1 3 | | | | 1 Nov. 20. Capital stock..... 3 1 | | | |
| Page 5. | | | | F. H. Denning. | | | |
| Azel Ford “ 1 4 | | | | 1 Nov. 20. Capital stock..... 4 1 | | | |
| Page 6. | | | | W. H. Puckett. | | | |
| Azel Ford “ 1 5 | | | | 1 Nov. 20. Capital stock..... 5 1 | | | |
| Page 7. | | | | Azel Ford. | | | |
| 1900. Shares. | | | | 1899. Shares. | | | |
| Jan'y 2nd. | | | | Nov. 20. Capital stock..... 6 4995 | | | |
| L. M. Bullitt.... 2295 | | | | (1900—Jan'y 2). | | | |
| Thomas Robb... 250 | | | | Azel Ford 10 20 | | | |
| Wm. Lang 150 | | | | 2300—11 30 | | | |
| Azel Ford..... 20 | | | | 12 50 | | | |
| “ 30 | | | | 13 100 | | | |
| “ 50 6 4995 | | | | 14 200 | | | |
| “ 100 | | | | 15 200 | | | |
| “ 200 | | | | 16 200 | | | |
| “ 200 | | | | 17 500 | | | |
| “ 200 | | | | 18 500 | | | |
| “ 500 | | | | 19 500 | | | |
| “ 500 | | | | Azel Ford 45 30 45 | | | |
| T. J. Morgan ... 155 15 155 | | | | “ “ 300 34 300 | | | |
| Azel Ford 45 15 45 | | | | | | | |
| “ 300 13 & 14 300 | | | | 7640 | | | |
| L. D. George.... 20 10 20 | | | | | | | |
| L. D. George.... 30 11 30 | | | | | | | |
| *L. D. George... 50 12 50 | | | | Forward on page 2.* | | | |
| | | | | | | | |
| 5595 | | | | | | | |

| | | | | |
|------------------|----------------|-----|--------------------|---------|
| Page 8. | Thos. Robb. | | | |
| T. J. Morgan.... | 8 | 100 | 1900. Jan'y 2. | |
| G. H. Smith.... | 8 | 149 | Azel Ford | 8 250 |
| C. F. Smith | 8 | 1 | | |
| Page 9. 1902. | Wm. Lang. | | | |
| Feb'y 6th. | | | | |
| T. J. Morgan.... | 75 35 75 | | Jan'y 2. | |
| G. H. Smith.... | 26 38 26 | | Azel Ford | 9 150 |
| C. F. Smith | 49 37 49 | | | |
| Page 10. | Geo. H. Smith. | | | |
| | 1901. Mar. 19. | | | |
| | | | L. M. Bullitt..... | 33 1200 |
| | | | Thos. Robb..... | 27 149 |
| | | | Wm. Lang..... | 38 26 |
| | | | Harry Allen..... | 44 100 |

| | | | | |
|--------------------|---------------|--------------------|--------------------|-------|
| Page 11. | T. J. Morgan. | 1901. | | |
| | | Mar. 19. | | |
| | | Azel Ford | 29 | 155 |
| | | L. M. Bullitt..... | 31 | 1000 |
| | | do. | 32 | 95 |
| | | Thos. Robb | 26 | 100 |
| | | 1902. | | |
| | | Feb'y 6. | | |
| | | Wm. Lang..... | 35 | 75 |
| | | | | <hr/> |
| | | | | 1425 |
| Page 12. | C. F. Smith. | 1902. | | |
| | | Feb'y 6. | | |
| | | Thos. Robb..... | 28 | 1 |
| | | Wm. Lang..... | 39 | 49 |
| | | Azel Ford..... | 43 | 45 |
| | | do. | 45 | 5 |
| | | | | <hr/> |
| Page 13. | L. D. George. | 1904. | | 100 |
| | | Aug. 6. | | |
| | | Azel Ford | 40 | 50 |
| | | | 41 | 50 |
| | | | | <hr/> |
| Page 14. | | | | 7640 |
| | | Azel Ford. | | |
| Harry Allen..... | 34 | 300 | L. M. Bullitt..... | 1 |
| Chas F. Smith..... | 30 | 45 | Thos. Robb..... | 1 |
| do. | 44 | 5 | T. H. Willson..... | 1 44 |
| | | | F. H. Denning..... | 1 |
| | | | W. M. Puckett..... | 1 |
| | | 5595 | | <hr/> |
| | | 5945 | | 7645 |
| 56 Page 15. | Harry Allen. | Azel Ford | 42 | 300 |

Dec. 22nd, 1906.

The above is a true copy of the Stock Ledger of the Raleigh Lumber Co.

CHAS. F. SMITH, *Sec'y.*

57 "EXHIBIT No. 11."

Whereas Geo. H. Smith for himself, Azel Ford, T. J. Morgan, Harry Allen, L. D. George and C. F. Smith, constituting all of the stockholders of the Raleigh Lumber Company, a West Virginia corporation, has entered into an agreement with W. M. Ritter of Columbus, Ohio, whereby the said stockholders will sell all of the stock in said company unto the said W. M. Ritter,

And whereas it is provided in such agreement that the said stockholders are to receive from W. M. Ritter the sum of three hundred thirty-seven thousand five hundred dollars (\$337,500.00) in consideration of such sale, to be paid by the said W. M. Ritter as follows:

That the said W. M. Ritter shall cause to be assigned and endorsed to the said Geo. H. Smith, and endorsed by the W. M. Ritter Lumber Company, four notes executed by G. S. Beckwith and L. F. McGrath payable to the said W. M. Ritter Lumber Company, each bearing the date June 30th 1906, for the sum of fifty thousand dollars (\$50,000.00) each, payable in twelve (12), eighteen (18), twenty-four (24) and thirty (30) months after the date thereof

respectively, with interest at the rate of five per cent (5%) per annum, and which said notes are secured by a trust deed *over* about twenty-eight thousand (28,000) acres of surface, coal and mineral rights and privileges, in Wyoming County, West Virginia, and deliver said notes to the said Geo. H. Smith, and at the same
58 time pay to the said Geo. H. Smith, or his assigns, the sum of one hundred thirty-seven thousand five hundred dollars (\$137,500.00) in cash, less ten dollars (\$10.00), the consideration paid for said agreement, and also less the accrued interest on said notes, which when due and paid shall constitute full payment for the sale, transfer and delivery of the said five thousand (5000) shares of the capital stock of the Raleigh Lumber Company.

And whereas it is provided in such agreement that the said stockholders are to have certain personal and real property of the Raleigh Lumber Company and that such personal and real property shall not pass with the assignment of the stock unto the said W. M. Ritter,

And whereas it is provided in such agreement that the said stockholders are to have all of the cash on hand and in bank, and the bills and accounts receivable, choses in action and debts owing to it, which said cash and accounts and choses in action and debts owing to it shall not pass with the assignment of the said stock unto the said W. M. Ritter,

And whereas further it is agreed among all the said stockholders of said Company that it is to their best interest to have such personal and real property as above set forth conveyed to and held by a trustee, rather than to have the same conveyed to and held by themselves individually, the said stockholders as above recited have hereby selected and do hereby appoint and constitute Geo. H. Smith of Chillicothe, Ohio, as such Trustee, and authorize him to receive
the same as such Trustee,

59 Now therefore in consideration of the premises and the further consideration of other valuable considerations to be paid unto the said Geo. H. Smith, he the said Geo. H. Smith hereby agrees and covenants to and with the said stockholders of the Raleigh Lumber Company as above set forth, that on behalf of and for himself and the other said stockholders of said company, he will receive and hold in trust the following described property when the same is properly transferred to him according to said agreement.

First. All of the notes and cash as above set forth to be paid by the said W. M. Ritter as the purchase price for said capital stock of the Raleigh Lumber Company.

Second. All of the cash on hand or in bank and the bills and accounts receivable, choses in action and debts due the Raleigh Lumber Company as of the date of said transfer of said capital stock of the Raleigh Lumber Company.

Third. All the real estate mentioned and described in a deed dated the 24th day of December 1906 between the said Raleigh Lumber Company and the said Geo. H. Smith as Trustee, a copy of which is attached hereto as a part hereof.

Fourth. All the stock of the Glade Creek & Raleigh Railroad Company held by the said Raleigh Lumber Company, or by Geo. H.

Smith, as Trustee for said Raleigh Lumber Company, on the date of the said transfer of the said stock of the Raleigh Lumber Company aforesaid,

60 And the said Geo. H. Smith as such Trustee as above mentioned further agrees that he will attend to the collection of all bills and accounts receivable, choses in action and debts owing to the said Raleigh Lumber Company including the notes received from W. M. Ritter as above recited, to the best of his ability.

And further that he will attend to the paying of the indebtedness of the Raleigh Lumber Co., as of the — day of December 1906 out of the funds so collected, as the same may become due and payable,

And further that he will distribute from time to time to the said stockholders as above recited, the said funds so received by him (after paying the debts of the company as above recited) in proportion to the amounts of stock held by each of the said stockholders in said company at the time of transfer of the said stock unto the said W. M. Ritter, which holdings of stock are as follows:

| | | |
|--------------------|-------|--------|
| Geo. H. Smith..... | 1,475 | shares |
| T. J. Morgan..... | 1,425 | " |
| Azel Ford..... | 1,700 | " |
| Harry Allen..... | 200 | " |
| L. D. George..... | 100 | " |
| C. F. Smith..... | 100 | " |

It is further understood and hereby agreed by the parties hereto that for the purpose of a sale or conveyance hereafter, and during the life time of this trust, of any part or all of the within mentioned or described real estate and personal property, that the price and terms of any such sale or conveyance shall be controlled

61 and regulated by the vote of the majority in interest of the parties to this trust, it being understood, however, that no sale or conveyance shall be so made to any person, firm or corporation in which any of the parties hereto are interested directly or indirectly unless by mutual agreement.

Witness the following signatures and seals this 22nd day of December 1906.

GEO. H. SMITH, *Trustee.*
 GEO. H. SMITH, [SEAL.]
 AZEL FORD, [SEAL.]
 HARRY ALLEN, [SEAL.]
 L. D. GEORGE, [SEAL.]
 CHAS. F. SMITH, [SEAL.]
 T. J. MORGAN, [SEAL.]

By J. M. WRIGHT.

62

Demurrer.

Filed Dec. 21, 1909.

* * * * *

The Demurrer of Azel Ford to the Bill of Complaint against Him
Exhibited.

This defendant, by protestation not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in manner and form as the same are therein set forth, doth demur thereto and for causes of demurrer, says:

1. That the said complainant hath not in and by his said bill stated such a cause as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from and against this defendant.

2. That if the matter stated ever did give the complainant any cause of complaint against this defendant, the same is barred by the complainant's laches as appears from his said bill.

3. That if the matter stated does give the complainant any cause of complaint against this defendant, the same is triable and determinable at law and ought not to be inquired of by this Court.

TUCKER & KENYON,
Attorneys for Defendant.

Service of copy of above demurrer admitted this 21st day of December, 1909.

GEO. FRANCIS WILLIAMS,
Attorney for Plaintiff.

63

Decree Sustaining Demurrer.

Filed Jan. 20, 1910.

* * * * *

Upon consideration of the demurrer to the bill of complaint herein and after argument by counsel, it is by the Court, this 20th day of January, 1910, adjudged, ordered and decreed that said demurrer be and the same hereby is sustained with leave to the complainant to amend his bill, as he may be advised, within thirty days hereof.

JOB BARNARD, *Justice.*

Amendments to Original Bill.

Filed Feb. 18, 1910.

* * * * *

Now comes the plaintiff and by leave of Court granted on the 20th day of January, 1910, and before the expiration of time set in said order, amends his original bill of complaint as follows, namely:

1. By inserting three paragraphs between the twelfth and thirteenth paragraphs of the bill to be designated respectively as paragraphs, 12 (a), 12 (b) and 12 (c), in the words and figures following, namely:

12 (a). In further explanation of the seeming delay of plaintiff in bringing suit against the defendant in the premises, the plaintiff says, that although, as alleged in the eighth paragraph of the bill, he made certain discoveries of fraud on the part of the defendant in

64 May, 1906, yet it was not until April, 1907, that he became aware that the statements made by defendant in May, 1906, and later, referred to in the bill in this cause relative to the contract of sale executed by plaintiff, namely, that the same was a contract of sale by plaintiff to defendant, were false; that although his, plaintiff's, recollection of the contract was that it empowered or purported to empower defendant to act as his agent and attorney in fact, and to sell for him his interest in the Beaty Lumber Company, and while his recollection of the conversation and oral negotiations which led up to said contract were clear to the same effect as set forth in the seventh paragraph of the bill, yet he not only had retained no copy or duplicate of said contract but had never seen the same except at the time he signed it, and inasmuch as the defendant in May, 1906, and subsequently between that date and April, 1907, several times said to plaintiff and his attorney that the contract in his possession would show that he, defendant, was dealing directly with plaintiff as purchaser and not as his agent and that he in fact was authorized by writings in his possession signed by plaintiff to purchase in his own right the interest of plaintiff in the Beaty Lumber Company, and also stated (see his letter of July 27th, 1907, Exhibit No. 7) that he had found a minute book which he alleged showed that he had acted fairly but which he never produced, the plaintiff was constrained and induced to defer taking any action whatever against the defendant until defendant had had an opportunity to produce the said contract and writings which, as averred in the bill, he requested both orally and in writing that plaintiff

65 would give him time to produce and explain; that although as alleged in the original bill plaintiff urged defendant to produce the original contract and made appointments with him for the purpose of inspecting the same, which defendant did not keep, between May, 1906, and April 1907, yet it was not until the last named month and year that the defendant produced what purported to be copies of the said contract and writings (being the same filed as exhibit No. 5). Therefore plaintiff avers that until April, 1907, he did not discover or know sufficient of the facts which had been concealed from him by the defendant and of the authority of the defendant to act in the premises to make it safe or proper for him to bring any suit or proceeding either to set aside the said contract or for accounting or other relief, so that in effect the discovery of the fraud dates from April, 1907. Plaintiff further states that even after the inspection by him of the papers purporting to be copies of the said contract and appended writings and from which, as he avers, it clearly appears that the defendant was con-

stituted and appointed by plaintiff his agent and attorney to sell his holdings in the Beaty Lumber Company, he was not fully informed of certain material facts about the organization of the Raleigh Lumber Company, which it would be necessary to establish and prove in case of suit against the said defendant. That accordingly after sending defendant the registered letter of May 20th, 1907, (exhibit No. 9 with original bill), plaintiff made further inquiries and investigations which necessarily consumed much

66 time, and that after he had been advised by his local counsel that it would be necessary to bring suit in this jurisdiction as it is the place of defendant's residence, further time was lost because the attorney first consulted by him in this District after retaining the papers of plaintiff for some weeks notified him that on account of other professional engagements he would be unable to take the case; that afterwards plaintiff employed another attorney of this District who advised that before bringing any suit the defendant be again notified and given a further opportunity to make an explanation as he had previously offered to do; that said attorney accordingly wrote defendant who sent in reply a message requesting a conference and making an appointment, this being in April, 1909, that defendant did not keep the appointment at the time, but notified plaintiff's attorney by telephone and messenger that he was obliged to go out of the District on business and requested that he await his return when he would make another appointment; that a similar postponement at defendant's request occurred again after which to wit, in June, 1909, said defendant called on plaintiff's attorney and the interview took place which is referred to in paragraph nine of the bill; that at said interview defendant stated that he would not in event of a suit defend on the ground of any delay of plaintiff in bringing suit but would contest the suit on its merits; that as a result of this interview plaintiff's attorney advised plaintiff to make further inquiries as to the truth or correctness of certain matters

67 brought forward by defendant, and also informed him what the latter had said about not making any defense on the ground of delay. Plaintiff accordingly made further inquiries and made a trip to Philadelphia (where for a considerable period the said Raleigh Lumber Company had its principal office) and had an interview in said City with one Logan M. Bullitt in the month of November, 1909, at which interview said Bullitt gave plaintiff information relative to the early history of the Raleigh Lumber Company which he believes and avers to be true, and among other matters informed plaintiff that he, Bullitt, did not put any money into the Raleigh Lumber Company nor pay money for any of its stock, that the incorporators other than himself were only nominally interested, were, as he expressed it "mere dummies," and did not pay, to the best of his knowledge, anything for their stock except perhaps the small per cent required by law to obtain the charter; that when the Company was being formed he knew that plaintiff was not aware of it, but that the defendant claimed to represent him; that defendant (although not an incorporator) and said Bullitt were the real organizers of the Raleigh Lumber Company

and agreed at the time of its formation that each should have a one-half interest in the same; that defendant contributed or "put in" the stock and property of the Beaty Lumber Company and his mill and some lumber at Piney, and said Bullitt on his part negotiated a loan from a Philadelphia bank for fifty thousand dollars (\$50,000.) on a note which he and defendant indorsed for working capital, and

68 that it was agreed that the Raleigh Lumber Company should cut timber on certain lands controlled by said Bullitt in West

Virginia, but this right was terminable at his will and was hence at the time of little value although afterwards a formal lease was entered into and that he ultimately, through legal proceedings instituted in Philadelphia, had a settlement with defendant and closed his connection with the Company. Plaintiff says that he had never before been able to meet the said Bullitt and that the facts communicated to plaintiff by him are material to his, plaintiff's case and he avers that until said interview with said Bullitt he was not informed of all of the facts bearing upon the controversy between himself and the defendant which were essential to be known by him and his counsel before framing a bill of complaint.

That as to the period which elapsed between the execution of the contract of December 21st, 1899, and the first discovery in May, 1906, of facts tending to show that defendant had not treated plaintiff fairly, but had defrauded him as alleged in paragraph eight of the bill, plaintiff says that he had no reason during all of said period to doubt and did not doubt that defendant had made a sale of his plaintiff's, interest in the Beaty Lumber Company to the Raleigh Lumber Company in accordance with the terms of the contract of December 21, 1899, and had sold the same Company his own holdings on the same basis, that in reply to inquiries about details of the sale the defendant at some time not long after the sale stated that his and plaintiff's holdings (constituting the assets and property of the

69 Beaty Lumber Company and Glade Creek and Raleigh Lumber Company) had been sold by him to the Raleigh Lumber

Company on the same basis; Plaintiff never saw and had knowledge of the records of either Company which related to the sales of the Beaty Lumber Company stock or the formation of the Raleigh Lumber Company until May, 1906; that it was not until after Mr. Smith had become President of the Company and at the meeting referred to in May, 1906, that the plaintiff received information which led him to make inquiries of Mr. Smith and others as averred in the bill. To that time he had had no reason to entertain any suspicion or doubt that the statements of the defendant in respect to his stockholdings and transactions were true. Plaintiff further avers that the books of the Raleigh Lumber Company were at the office in Philadelphia until shortly before the time mentioned (as he is informed and believes) and that he was never at the Philadelphia office, while the minutes of the Beaty Lumber Company had been in the possession of the defendant and he stated to plaintiff that the old minute book of the Beaty Lumber Company and the stock book were lost or misplaced.

12 (b). The Glade Creek and Raleigh Railroad Company re-

ferred to in the original bill of complaint was in large part constructed by J. R. Beaty and Company and was completed by the Beaty Lumber Company which took the same over when it bought the holdings of J. R. Beaty and Company, the entire cost of construction being more than \$100,000. That the said Railroad Company was an asset of and belonged to the said J. R. Beaty and Company and afterwards to the Beaty Lumber Company and that
70 at the time of the sale to the Raleigh Lumber Company, the defendant and the plaintiff were interested in the said Railroad Company in the same proportion as they were interested in the Beaty Lumber Company; that plaintiff knows of no bonds of the Railroad Company except the same bonds mentioned amounting in all to \$50,000. which incumbered the property of the Beaty Lumber Company as well as of the Railroad Company and which as he is informed and believes were issued in the name of the Railroad Company, and were *intimately* paid. To the best of plaintiff's information and belief the defendant was the owner of no bonds of the said Railroad Company at the time of the transfer and sale to the Raleigh Lumber Company. That the designation in said copy of contract of December 21, 1899, of plaintiff's interest in said Railroad as a "\$500. interest" is an evident error, and that through color of said contract and power of attorney defendant acquired all interest of plaintiff in said Railroad Company and transferred the same to the Raleigh Lumber Company, deriving benefit to himself by the transaction.

12 (c). Plaintiff further alleges that although as hereinbefore stated the defendant was the agent and attorney of plaintiff to sell yet he became the purchaser of the interest and holdings of plaintiff in said Beaty Lumber Company and Glade Creek and Raleigh Railroad Company to his great profit and to the great injury of plaintiff; that while plaintiff was led to suspect that such was the case in May, 1906, yet he was unable to obtain proof of that fact until a
71 much later date, to wit, much less than three years before bringing this suit, although he made diligent efforts to investigate and discover the facts from the time that his suspicions were first aroused, and he is advised and avers that he is entitled to the aid of a court of equity to have said contract of sale of December 21, 1899, and said purchase by defendant of the holdings of plaintiff, which, in violation of the terms and spirit thereof, he effected as aforesaid, rescinded and set aside; that in equity and good conscience the defendant should be held to have taken and received in trust for plaintiff all of the stock in the Raleigh Lumber Company which he received in exchange for the interest and stock in said Beaty Lumber Company and said Railroad Company which he had acquired from the plaintiff, subject, however in any accounting or settlement to full credit being given defendant for all stock and proceeds of stock and moneys received by plaintiff in the premises as set forth in the (original) bill.

II. By further amending the bill in the following matters, namely:

1. By striking out the words "a like" in the seventh line of the seventh page of the bill (paragraph six) and substituting therefor

the pronoun "his" so that the clause in which said words occur will read "and also his interest in the Glade Creek and Raleigh Railroad Company."

2. By inserting the words "more than" in the eleventh line of the ninth page between the words "until" and "six" so that the clause in which said words occur will read as follows "and it was not until more than six years elapsed that he discovered that he had not been treated fairly."

72 3. By inserting the word "ultimately" between the words "they" and "found" in the twenty-second line of the tenth page so that the clause in which said inserted word appears will read as follows: "and other sources they ultimately found further the following to be facts, namely."

4. On the fourteenth page, third line from the bottom at the first word of the eighth paragraph, to wit, "thereupon" by striking it out and substituting "thereafter, to wit, May 10th, 1907."

5. By striking out the words "or through" at the end of the third line counting from the bottom of the sixteenth page.

III. By further amending the bill by inserting the following prayer on the last page of the bill between the second and third prayers to be designated as prayer 2 $\frac{1}{2}$ to read:

2 $\frac{1}{2}$. Or that in the alternative the court will by its decree direct the defendant to deliver up for cancellation the contract of December 21, 1899, and power of attorney thereunto appended, and will decree that the sale made to himself by the defendant under color of said contract of the interest and holdings of the plaintiff in the Beaty Lumber Company and the Glade Creek and Raleigh Railroad Company, be rescinded and set aside, and that the defendant be deemed and held as trustee of the plaintiff for all stock and proceeds of stock and dividends which he received from the Raleigh Lumber Company and from any other source as a result of the sale of the said interest and stock holdings of plaintiff which defendant

73 acquired as aforesaid and then sold and transferred as his own property to the Raleigh Lumber Company; and that so far as practicable the Court will restore the plaintiff to his former status in reference to his interest and stock holdings by requiring the defendant to transfer and deliver to him such stock as he may have in his possession or subject to his control which rightfully belongs to the plaintiff, and accounting as trustee of and for the residue, after allowing the defendant credit for all stock, money and proceeds of stock which the plaintiff has received from the defendant or otherwise as a result of the transfer to plaintiff of the 100 shares of stock of the Raleigh Lumber Company in January, 1900, as alleged in the bill, and also after allowing defendant credit with interest for the sum of \$5000, received by plaintiff from defendant at or shortly after the same time.

GEO. FRANCIS WILLIAMS,
W. E. ENNIS,

Attorneys for Plaintiff.

Demurrer to Bill of Complaint as Amended.

Filed Feb. 25, 1910.

* * * * *

The Demurrer of Azel Ford to the Bill of Complaint as Amended,
Against Him Exhibited.

74 This defendant, by protestation not confessing or acknowl-
edging all or any of the matters and things in said bill of
complaint, as amended, contained, to be true in manner and
form as the same are therein set forth, doth demur thereto and for
causes of demurrer, says:

1. That the said complainant hath not in and by his said bill
as amended stated such a cause as doth or ought to entitle him to
any such discovery or relief as is thereby sought and prayed for from
and against this defendant.

2. That if the matter stated ever did give the complainant any
cause of complaint against this defendant, the same is barred by the
complainant's laches as appears from his said bill as amended.

3. That if the matter stated does give the complainant any cause of
complaint against this defendant, the same is triable and determin-
able at law and ought not to be inquired of by this Court.

TUCKER, KENYON & MACFARLAND,
Attorneys for Defendant.

Decree Sustaining Demurrer and Dismissing Bill of Complaint.

Filed May 18, 1910.

* * * * *

This cause having come on to be heard on the demurrer to the
bill of complaint, as amended, and having been argued by the at-
torneys for the respective parties and submitted to the Court, it is
by the Court this 18th day of May, 1910,

75 Adjudge^d, ordered and decreed that the demurrer to said
bill of complaint, as amended, be and the same is hereby
sustained and said bill of complaint as amended, be and it is hereby
dismissed; and further that the defendant recover his costs of suit
against the plaintiff and W. A. Wimsatt the surety named in the
undertaking for costs heretofore filed by him, said costs to be taxed
by the clerk, and have execution therefor as at law.

JOB BARNARD, *Justice.*

Plaintiff's Note of Appeal to the Court of Appeals of the District of Columbia.

Filed Jun- 6, 1910.

* * * * *

Now comes the plaintiff and notes an appeal to the Court of Ap-
peals of the District of Columbia from the final decree entered in

the above-entitled cause on the 18th day of May, A. D. 1910, and directs the Clerk to issue citation on appeal addressed to the defendant.

GEO. FRANCIS WILLIAMS,
Attorney for Plaintiff.

76 In the Supreme Court of the District of Columbia.

No. 28979. In Equity.

LEWIS DUDLEY GEORGE
vs.
AZEL FORD.

The President of the United States to Azel Ford, Greeting:

You are hereby cited and admonished to be and appear at a court of appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal filed in the Clerk's Office of the Supreme Court of the District of Columbia, on the 6th day of June, 1910, wherein Lewis Dudley George is Appellant, and you are Appellee, to show cause, if any there be, why the Judgment—Decree—rendered against the said Appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, this 6th day of June in the year of our Lord one thousand nine hundred and ten.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*
By W. E. WILLIAMS, *Ass't Cl'k.*

A true copy.
Teste:

J. R. YOUNG,
Ass't Cl'k.

Service of the above Citation accepted this 7th day of June, 1910.
TUCKER, KENYON & MACFARLAND,
Attorneys for Appellee.

[Endorsed:] No. 28979. Equity. Lewis Dudley George vs. Azel Ford. Citation. Issued June 6", 1910. George Francis Williams, Attorney for Appellant. Filed Jun- 8, 1910. J. R. Young, Clerk.

77 *Order Fixing Amount of Appeal Bond.*

Filed Jun- 8, 1910.

* * * * *

On motion of the plaintiff, by George Francis Williams, his attorney, It is, this 8th day of June 1910, ordered that the amount

of the bond for costs of the appeal noted herein by plaintiff be and it is hereby fixed at one hundred dollars.

By the Court:

THOS. H. ANDERSON,
Justice.

Memorandum.

June 8, 1910—Appeal bond filed.

78 *Directions to Clerk for Preparation of Transcript of Record.*

Filed Jun- 23, 1910.

Now comes the plaintiff (appellant), by his attorney and directs the Clerk, in making up the transcript of record, on appeal to the Court of Appeals noted herein, to include the fololwing, namely:

1909 Dec. 3. Original bill.

“ 3. Exhibits.

“ 21. Demurrer to original bill.

1910 Jan. 20. Decree sustaining demurrer to original bill.

Feb. 18. Amendments to original bill.

“ 25. Demurrer to bill as amended.

May 18. Decree sustaining demurrer to bill as amended and dismissing said bill.

Memorandum of notation of appeal, June 6, 1910, issuance and return of citation, order fixing appeal bond for costs at \$100, and approval and filing of said bond, June 8, 1910.

GEO. FRANCIS WILLIAMS,
Attorney for Plaintiff (Appellant).

We hereby agree to the above designation.

TUCKER, KENYON & MACFARLAND,
Attorneys for Appellee.

79 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 78, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 28979, in Equity, wherein Lewis Dudley George is Plaintiff and Azel Ford is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 21st day of July, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

80 *Addition to Record per Stipulation of Counsel.*

Court of Appeals, District of Columbia, October Term, 1910.

No. 2194.

LEWIS DUDLEY GEORGE, Appellant,

vs.

AZEL FORD.

Filed September 13, 1910.

81 In the Court of Appeals of the District of Columbia, October
Term, 1910.

No. 2194.

LEWIS DUDLEY GEORGE, Plaintiff and Appellant,

vs.

AZEL FORD.

Stipulation of Counsel.

For the convenience of court and counsel it is hereby stipulated and agreed by and between the appellant and the appellee in the above-entitled cause, acting by their respective attorneys of record, that the Clerk of the Court of Appeals, in having the record printed, shall cause to be printed as a part of the record in this cause the "Amended Bill of Complaint," attached hereunto and hereby made a part of the record herein, it being the same as the original bill of complaint with all of the amendments thereunto inserted therein in their proper places and order. Said amendments were duly filed (after a demurrer to the original bill had been sustained) and are copied into the transcript of the record transmitted to this Court, but a copy of the original bill as so amended (being the same as the said amended bill filed herewith) was not actually filed in the Clerk's Office below and hence does not appear in the transcript of the record as transmitted to this Court. It is hereby admitted and agreed that a true copy of said amended bill herewith filed was served on defendant's attorneys in due course, shortly after the filing of said amendments, and that said amended bill is the same actually considered and passed upon by Mr. Justice Barnard in the hearing on the demurrer to the original bill as amended, which demurrer was sustained.

Witness their hands this eleventh day of September, 1910.

GEO. FRANCIS WILLIAMS,

Attorney for Plaintiff.

CHAS. COWLES TUCKER,

Attorney for Defendant.

82 In the Supreme Court of the District of Columbia, Holding
an Equity Court.

No. 28979. In Equity.

LEWIS DUDLEY GEORGE, Plaintiff,
vs.
AZEL FORD, Defendant.

Amended Bill of Complaint.

To the Honorable the Justice holding a Special Term of said Court as a Court of Equity, the plaintiff respectfully states as follows:

1. That he is a citizen of the United States and of the State of Virginia and resides in Caroline County in said State; that he brings this suit in his own right.

2. That the defendant is likewise a citizen of the United States; and resides in the District of Columbia and is sued in his own right.

3. That about the year 1890, plaintiff and one B. B. Wright and J. R. Beaty entered into a partnership by the firm name of J. R. Beaty & Company for conducting a lumber business in Raleigh County, West Virginia, purchased valuable timber lands and outfit, and for several years conducted the business of manufacturing lumber and increased their holdings until Beaty Lumber Company was formed in 1896. That on the 2nd day of June, 1896, a corporation called the Beaty Lumber Company was organized under the laws of the State of West Virginia and charter issued to it in due form; that the original incorporators of said Company were B. B. Wright for J. R. Beaty & Company, W. W. Boxley, J. C. Carpenter, the plaintiff by the name of L. D. George and the defendant,

83 each of whom subscribed for and received and became the holder of two shares of stock at the time of the organization of the said corporation; that said corporation at the same meeting adopted certain by-laws for its government, and upon vote of its stockholders in due form increased the capital stock to the sum of \$300,000 in 3000 shares of \$100 each, and the authorized capital stock of said Company from and after the date of said meeting was of the amount of \$300,000 in 3000 shares of \$100 each, in accordance with the authority conferred by its charter and the vote of stockholders aforesaid. See copy of By-Laws and Minutes marked "Exhibit No. 1" herewith filed and prayed to be read as a part of this Bill. Of said authorized amount of capital stock 2187 shares or about that number had been duly subscribed for by January 6, 1897, and plaintiff is informed and believes and avers that the residue have never been subscribed for or issued.

4. The object and business of said Corporation included the cutting and marketing of lumber and its principal office was located at Crow in Raleigh County, West Virginia. Both the plaintiff and the defendant were duly elected directors in said Company in the

year 1896 and continued to hold office as directors until after the sale of the assets of said Company to the Raleigh Lumber Company, hereinafter mentioned. The said Beaty Lumber Company acquired valuable properties by purchase of the said J. R. Beaty & Company for stock to the amount of 1131 shares in said Beaty Lumber Company to be issued to B. B. Wright, J. R. Beaty and plaintiff. That said Beaty Lumber Company purchased of B. B. Wright a one-fourth undivided interest in a certain tract of land known as the Bond Brothers and Company's tract, to be paid for in stock to the amount of 265 shares; that it bought another one-fourth of said tract from defendant to be paid for in stock to the amount of 263 shares; and it bought the remaining half of
84 said land from J. C. Carpenter and W. W. Boxley to be paid for in stock to the amount of 524 shares of stock, which, with the two shares held by L. D. George individually and two shares held by W. W. Boxley made up the 2187 shares subscribed for by the 6th day of January, 1897. See copy of minutes of said second meeting of stockholders filed herewith and marked "Exhibit No. 2" and prayed to be read as a part of this Bill. From subsequent minutes of the Company it would appear that the amount of the Carpenter and Boxley stock was actually 526 and $57/100$ shares instead of 524 as stated in the minutes of January 6th, 1897, and it appears from the minutes of the Beaty Lumber Company dated December 26th, 1898, that J. C. Carpenter surrendered and assigned to the Company the 526 $57/100$ shares of stock which were owned by him and Boxley, he having failed to pay for the land which was the consideration for the same, and this stock should have been cancelled; see copy of minutes of Directors filed herewith as "Exhibit No. 3" and prayed to be read as a part of this Bill.

That on the 24th of January, 1899, the Beaty Lumber Company bought out the interest of J. R. Beaty in said Company for the sum of \$11,000 in addition to advances theretofore made said Beaty for which payment was made in \$10,000 of its first mortgage bonds and \$1,000 in cash; See copy of minutes of Directors of January 24th, 1899, filed herewith marked "Exhibit No. 4" and prayed to be read as a part of this Bill.

That at this date, January 24th, 1899, the stock of said Company was held by B. B. Wright, the defendant, the complainant, and B. V. Boxley and Carpenter and Boxley (see Exhibit No. 4) the original holdings of said parties having been increased by the purchase of the J. R. Beaty stock.

85 5. From the organization of said Beaty Lumber Company until January 23rd, 1900, the said B. B. Wright was the President and until some time in the year 1899 he was one of the principal stockholders in said Beaty Lumber Company; that in said year 1899, and prior to the 18th day of November, the defendant purchased from said Wright his stock in said Company. That from and after the day of the purchase of said stock by said Ford from said Wright, the defendant was the largest stockholder in said Company. Plaintiff at that time and until the sale of his interest hereinafter referred to was lawfully entitled to stock in said Com-

pany amounting to at least one-sixth of the entire outstanding and subscribed stock, in other words he was an owner of said corporation to the extent of one-sixth, and the defendant was, as plaintiff is informed and believes, and therefore alleges, the real owner of all of the residue of said stock although a few shares thereof, to wit, about five shares, were held in the names of certain of his employees and relatives to qualify them as directors. Consequently said corporation, at the time of the agreement by plaintiff to sell his stock hereinbefore referred to, to wit, December 21st, 1899, was owned by the parties to this cause in the proportion of one-sixth in the plaintiff and five-sixths in the defendant. There had been however, at the date last mentioned, actually issued and delivered to plaintiff certificates for only 150 shares of stock, and he was therefore entitled to have certificates for additional shares of stock issued to him in an amount sufficient to increase his shares to one-sixth of the entire subscribed and outstanding capital stock. Plaintiff was informed and believed that certificates for said additional shares were made out ready for delivery to him, although not detached from the stock book, and that said stock book thereafter came into the

possession of defendant, and said certificates have never been
86 delivered to plaintiff. Plaintiff would further state that

prior to December 1899, he repeatedly asked defendant for the balance of his stock, and was told by said defendant that the balance of his, plaintiff's, stock could not be issued or delivered to plaintiff by the Company until a certain loan of \$50,000 had been repaid by the Company; that the stock was hypothecated to secure said loan. Plaintiff would state that said loan, which was evidenced by an issue of bonds secured on the property of the Company by a deed of trust, was not due at the time said statements were made and would not fall due until the year 1907, as will be seen from an inspection of the minutes of said Company. Plaintiff was also the owner of a one-sixth interest in a corporation known as the Glade Creek and Raleigh Railroad Company, subject to incumbrance, in which corporation defendant was also largely interested.

6. Plaintiff further states that for a long period to wit, nine months or more prior to the 21st day of December, 1899, he took no active part in the management of said Beaty Lumber Company and resided in Caroline County, Virginia, a long distance from the place where its operations were carried on, which was in Raleigh County, West Virginia, and did not often visit said place of business; that defendant on the contrary spent a great part of his time, during the same period at the place of business of said Company, and had in charge the actual management of the same; that plaintiff relied upon the defendant to inform him of the operations and affairs of the said Company and also as to its financial condition and this was known to defendant. That in the latter part of the year 1899, said defendant made an appointment with the plaintiff to meet him at Richmond, Virginia, and they accordingly met in said City on or about December 21st, 1899, and had interview at which

the defendant stated in substance that the Beaty Lumber Company was in a bad way financially, that it was losing ground; that its best lease hold interest (that of the timber on the lands of Logan M. Bullitt and others) was about to be wrested from it by a new company called the Raleigh Lumber Company; and that the best thing for the Beaty Lumber Company to do would be to sell out all of its assets and holdings to the said new company; that he, defendant, would undertake to make a sale to the said company if authorized; and he further represented and stated in substance to plaintiff at the time that in case the said Raleigh Lumber Company should succeed as he, the defendant, believed it would succeed, in wresting from the Beaty Lumber Company its lease of the aforesaid lands, the stock of the said Beaty Lumber Company would not be worth ten cents on the dollar, and the defendant then and there advised and strongly urged that plaintiff consent to a sale before matters grew worse. At the same interview defendant further stated in substance to plaintiff that he desired that the interest of the latter should be taken care of in the same way as his own, and that a sale should be made on the basis of exchange of stock of the Beaty Lumber Company for that of the Raleigh Lumber Company; that the latter would be worth par, and that in the opinion and belief of the defendant the stock of that Company was worth at the time ten times the actual value per share of the Beaty Lumber Company. Referring to the aforesaid statements and representations plaintiff now avers and charges that the same were false and misleading in material respects, but that he at the time believed the same to be true, and that the defendant intended for him to rely upon the same, and that the defendant made said statements and representations fraudulently and knowing them to be false and misleading and for the purpose of inducing and persuading him to consent to a sale of his interest in said Beaty Lumber Company upon certain terms which were evidenced by a memorandum of an agreement in writing which said defendant then and there drew up and induced the plaintiff to execute and deliver whereby he, the plaintiff, agreed in terms that the defendant might sell for him his interest in the Beaty Lumber Company, being a one-sixth interest in the capital stock thereof, and also his interest in the Glade Creek and Raleigh Railroad Company, for the sum of \$2500 in cash to be paid on or before January 15th, 1900, \$2500 on or before the 15th day of May, 1900, to be evidenced by a note to be either made or indorsed by defendant, and stock to the amount of \$10,000 in the aforesaid Raleigh Lumber Company, which memorandum of agreement is dated the 21st day of December 1899, was signed by both the plaintiff and the defendant on or about the day of its date and had appended thereto a power of attorney bearing the same date executed by plaintiff, relying on the aforesaid representation and statements of defendant, which, in terms, authorized defendant to do all things requisite and necessary to carry out a contract for the disposition of the interests of said plaintiff in accordance with said memorandum of agreement. There was also appended at the same time to the said memorandum of agreement

an additional written statement which plaintiff signed, to the effect that if defendant should succeed in selling plaintiff's interest in the Beaty Lumber Company and said Glade Creek and Raleigh Railroad Company, defendant would accept \$10,000 for the amount of stock he held in the Raleigh Lumber Company, if paid within one year from January 1st, 1900, meaning thereby the stock he, plaintiff, would acquire of said Raleigh Lumber Company in case said sale agreed upon in said memorandum of agreement should be consummated and stock of said Raleigh Lumber Company
89 delivered to him accordingly. Copies of said memorandum of agreement and power of attorney and additional signed statement aforesaid were furnished your complainant by the defendant in the year 1907, after repeated efforts by your plaintiff to obtain the same from the defendant. The original of said paper was delivered on or about the day of its date to defendant and the same remains in his possession as plaintiff believes. Said copies furnished by defendant are herewith filed marked "Exhibit No. 5" and prayed to be read as a part of this Bill, and plaintiff calls for the production of the originals by defendant. Further referring to the said misrepresentations of defendant, plaintiff says that as he has since been informed and believes and hence avers the financial condition and business prospects of said Beaty Lumber Company were much better than stated to him by said defendant and that the property and rights of the company were of great value, to-wit, \$300,000 over and above the encumbrance of \$50,000, all of which was well known to said defendant at the time.

7. Plaintiff further says that the defendant represented at the interview referred to in the fifth paragraph and subsequently that he was acting in the best interest of plaintiff and said Beaty Lumber Company, and gave plaintiff to understand and believe that defendant had no interest in the Raleigh Lumber Company, and that no sale by the Beaty Lumber Company to said Raleigh Lumber Company had been agreed upon, and that he proposed to attempt to make such a sale if authorized by plaintiff. Plaintiff further says that soon afterwards, to wit, about the — day of January, 1900, the defendant represented to him that he had effected a sale of his, plaintiff's, interests in the Beaty Lumber Company at the price and on the terms
authorized by the agreement of December 21st, 1899, and
90 plaintiff, through a bank in Richmond, Virginia, delivered to said defendant his certificates for \$15,000. of the Beaty Lumber Company stock, and received from the defendant the consideration called for by said agreement, namely, \$10,000. in Raleigh Lumber Company stock, \$2,500. in money and \$2,500. in a note subsequently paid.

8. Plaintiff further says that at the times the several statements and representations of defendant alleged and referred to in the last two foregoing paragraphs of this Bill were made respectively, he believed the same and relied upon the good faith and fairness of the said defendant, and it was not until more than six years had elapsed that he discovered that he had not been treated fairly, but had been defrauded by defendant in the transfer of said stock. That the oc-

casion of the discovery was this—Sometime in the year 1906, plaintiff was notified by George H. Smith, President of the Raleigh Lumber Company, that a deal was on foot to sell the stock of said Company to some northern capitalists for a good price, and that he should be on hand at the Company's office at Raleigh, Raleigh County, West Virginia, in case the said deal should be consummated; that plaintiff in May, 1906, accompanied by his attorney met the said George H. Smith and the defendant and some of the other officers of the said Company at the office in Raleigh, West Virginia, that during the negotiations plaintiff asked Mr. George H. Smith the President of the Raleigh Lumber Company about the issue and holdings of stock, and was informed that no stock had been issued to plaintiff originally and that the 100 shares of stock which stood in his name had been transferred to him by the defendant Azel Ford as a part of a very large issue of stock which had been made

91 in the name of the defendant. Plaintiff then asked the defendant for an explanation and also about his certificates for additional shares of the Beaty Lumber Company stock which had never been issued to him, and was informed by the defendant that he, the plaintiff, had sold to him, Ford, all of his stock in the Beaty Lumber Company for the sum of \$5,000. and the 100 shares of stock in the Raleigh Lumber Company, and that he could show him the contract which was at his office in Washington, D. C. Plaintiff, believing that he had been deceived by the said defendant, called for the minutes of the Beaty Lumber Company, and of the Raleigh Lumber Company, which were readily produced by Mr. George H. Smith, President of the Raleigh Lumber Company, and plaintiff and his attorney went over the records of said Company, and also examined the records in the Court House of Raleigh County, and found that the certificate of incorporation of the Raleigh Lumber Company was recorded November 15th, 1899, (see copy of minutes of first meeting of incorporators of said Company held November 20th, 1899, containing copy of said certificate of incorporation of said Company, and by-laws thereof, herewith filed marked Exhibit No. 6, and prayed to be read as a part of this Bill); and from the minutes of said Raleigh Lumber Company and of the Beaty Lumber Company, and other sources they ultimately found further the following to be facts, namely:—that negotiations for purchase by the Raleigh Lumber Company from the said Beaty Lumber Company of the business and assets of the latter in which said defendant had participated, but of which plaintiff had no knowledge nor notice; were in progress by the 18th day of November 1899, on which day a special meeting of the board of directors of said Beaty Lumber Company of which plaintiff had no notice or knowledge was held at Crow, West Virginia, the same being called at the instance of said defendant, at which directors' meeting the following resolution as appears from the minutes thereof was adopted, namely:—

92 “On motion of Mr. Ewart seconded by Mr. Willson it was Resolved that this Company sell and transfer to the Raleigh Lumber Company all the property, Good Will and bills receivable and stock on hand in consideration of the assumption by The Raleigh Lumber Company of all outstanding indebtedness of The

Beaty Lumber Company and that the officers of this Company be, and they are hereby authorized and directed to sign and acknowledge such deeds and other writings as may be necessary to carry the transfer into effect."

But four directors were present at said meeting and they were related to and connected in business with the defendant as follows, namely, Ewart, the defendant's brother-in-law (as plaintiff is informed and believes) Anderson, who was his attorney, Willson, who was his book-keeper, and W. M. Puckett who was cashier in his bank at Hinton, West Virginia; that notwithstanding the consideration for the said sale of all the property and assets of said Beaty Lumber Company was stated in said resolution to be the assumption by the purchasing Company of all the indebtedness of the selling Company, yet the true consideration (while it doubtless included the assumption of said indebtedness) was the delivery and issuance to defendant, who in the matter of said sale appears to have acted as the owner of said Beaty Lumber Company, of a large number of shares of stock of the Raleigh Lumber Company, and it appears from the minutes of the latter Company that said defendant shortly thereafter offered to sell to said Company and said Company by resolution of its directors adopted on the 29th day of November 1899, agreed to purchase from said defendant in consideration of 4995 shares of the capital stock of said Raleigh Lumber Company all of the property and assets of said Beaty Lumber Company the stock and bonds of the said Glade Creek and Raleigh Railroad Company (of which latter stock plaintiff as aforesaid owned one-sixth) and defendant's mill and lumber at Piney, West Virginia; and that said sales were consummated in accordance with said resolution of November 29th, 1899, and for the consideration therein set forth, namely, 4995 shares of stock of said Raleigh Lumber Company of the par value of \$100, each, which were issued to said defendant; the entire capital stock of said Company being \$500,000. so that the said issue of shares exhausted all but five shares of the capital stock, that on or about the 23rd day of January 1900, at a meeting of the stockholders of the said Beaty Lumber Company held at Crow, West Virginia, of which plaintiff had no notice or knowledge but at which defendant was present a resolution was passed as follows, namely:—

"Resolved that the action of the Directors in selling the property of The Beaty Lumber Company to The Raleigh Lumber Company be and the same is hereby ratified, confirmed and approved."

On the same day said defendant was elected President of the Beaty Lumber Company at a directors' meeting which is the last directors' meeting of which there is any record, and plaintiff had no notice or knowledge of said directors' meeting.

9. Until this information was derived by plaintiff from the records of the Companies, he had believed that defendant had shared in the matter of transfer of their holdings to the Raleigh Lumber Company in the same proportion as they were interested in the Beaty Lumber Company, namely, in proportion of one-sixth to plaintiff and five-sixths to defendant, and he thereupon made the

claim that a considerable portion of the stock issued to defendant should have been issued in his name, and he stated to the President of the Raleigh Lumber Company that he proposed to take legal action to recover so much of the stock that had been issued to defendant as he, plaintiff, could show should have been issued to him, but he was dissuaded from taking such action by representations of the President of the said Raleigh Lumber Company,

94 namely, George H. Smith to the effect that the Raleigh Lumber Company was on the eve of making an advantageous sale of its stock and lumber business to some northern capitalists and that any action brought at that time would result in terminating unfavorably the negotiations for said sale which were about completed, and he advised plaintiff not to bring action at that time but to allow the sale to be made, because, it was to the interest of all of the stockholders of the Raleigh Lumber Company including plaintiff; and he advised plaintiff at the same time that any action which plaintiff would bring in the premises should be properly brought against the defendant for receiving said stock and not accounting therefor, rather than against the said Company for issuing, or causing to be issued said stock to defendant, and that said suit against the defendant could be prosecuted by plaintiff as well after the sale of the stock and business of the Raleigh Lumber Company as before said sale. That your plaintiff at that time, to wit, May 1906, asked the defendant to adjust this matter and he replied that of plaintiff and his attorney would meet him in Washington he would produce the contract between him and your plaintiff and adjust matters satisfactorily. That plaintiff's attorney who resided at Bowling Green, Virginia, wrote to the defendant asking for an appointment and received the letter herewith filed dated July 27th, 1906, marked "Exhibit No. 7", and prayed to be read as a part of this Bill; that plaintiff made two engagements with defendant to talk over matters in Washington, D. C., in the early part of the year 1907, both of which engagements the said defendant failed to keep; plaintiff and his attorney having made two trips to said City to keep said appointments; that the said defendant on April 11, 1907, sent the letter to plaintiff herewith filed marked "Exhibit No. 8"

95 and asked to be read as a part of this Bill. In the meantime the deal above referred to having fallen through another deal was made on or about the 22nd day of December, 1906, with the W. M. Ritter Lumber Company whereby the stock of said Raleigh Lumber Company was transferred unto W. M. Ritter, President of the said Ritter Lumber Company, for the consideration of \$337,500., the Raleigh Lumber Company retaining its interest in the real estate and in the Glade Creek and Raleigh Railroad Company and in certain personal property which was conveyed to George H. Smith, Trustee, for the benefit of the stockholders of said Raleigh Lumber Company as set forth in a duplicate contract filed herewith marked "Exhibit No. 11" and prayed to be read as a part of this Bill. That plaintiff did not object to this transfer and signed the papers leaving the matters at issue between him and the defendant to be determined later as agreed between him and said

defendant; that some time later the Glade Creek and Raleigh Railroad Company was sold to the Chesapeake and Ohio Railroad Company for the sum of \$100,000., and when the officers of the Raleigh Lumber Company were in Richmond about the month of April, 1907, negotiating said sale, plaintiff and his attorney met defendant at the Jefferson Hotel in said City and asked him to produce the contract which he claimed to have had with plaintiff; that he never produced the original contract but exhibited to plaintiff the copy filed herewith as "Exhibit No. 5", which at the request of the plaintiff's attorney the defendant turned over to him; that defendant again made an appointment to meet plaintiff in Washington, D. C., which he failed to keep, which was the occasion of his writing the letter filed as "Exhibit No. 8."

Thereafter, to wit, May 10, 1907, plaintiff sent defendant by registered mail a letter repudiating the contract, copies of which had been furnished as aforesaid, a copy of which letter is herewith
96 filed marked "Exhibit No. 9" and asked to be read as a part of this Bill; that the defendant made no reply to said letter; but that afterwards, to wit, the — day of June 1909, at an interview between counsel for plaintiff and the said defendant, the latter was again requested on behalf of the plaintiff to account to him at said interview refused to make any accounting or settlement and therefore your plaintiff is compelled to have recourse to this suit.

10. Plaintiff further states that in December, 1906, or January, 1907, he obtained a copy of the stock ledger of the Raleigh Lumber Company, which is herewith filed marked "Exhibit No. 10" and prayed to be read as a part of this Bill. Plaintiff charges, from belief and information obtained from said stock ledger and from the minutes of the Raleigh Lumber Company, that on November 20th, 1899, when the Raleigh Lumber Company was organized the stock holdings were as follows: Logan M. Bullitt, one share, T. Robb, Jr., one share, T. H. Willson, one share, F. H. Demming, one share, W. M. Puckett, one share; that on or shortly after November 29th, 1899, pursuant to a resolution adopted on that day by the Raleigh Lumber Company, the balance of the capital stock of that Company namely, 4995 shares, was issued to and in the name of the defendant, Azel Ford. Your plaintiff is now informed and believes that from the organization of the Raleigh Lumber Company until after the purchase of the property of the Beaty Lumber Company, the said defendant was in full control of the former Company, and that the entire matter of the purchase of the property of the Beaty Lumber Company by the Raleigh Lumber Company was negotiated and consummated by him, the defendant, or by his direction. It would

further appear from said stock ledger that the defendant in
97 addition to transferring unto the plaintiff 100 shares of the total of 4,995 shares issued to him as aforesaid, transferred on the 2nd day of January 1900, 2,295 shares thereof into Logan M. Bullitt, 250 shares thereof unto Thomas Robb, 150 shares thereof to one William Lang, 155 shares thereof to one T. J. Morgan, 300 shares thereof unto Harry Allen and 50 shares thereof unto one Charles F. Smith, retaining the residue of said shares namely, 1,695

shares, in his own name, and that he acquired 5 shares which were held by the original subscribers, namely, Bullett, Robb Willson Denning and Puckett, making a total of 1,700 shares retained in the name of said defendant at the time said copy was certified to by the Secretary of the Raleigh Lumber Company to wit, December 22nd, 1906, to be a true copy of the stock ledger. While the resolution hereinbefore referred to of the Raleigh Lumber Company authorizing the issue of 4,995 shares of stock of that Company to the defendant refers as consideration for said issue of stock not only to the property and assets of the Beaty Lumber Company and the stock of the Glade Creek and Raleigh Railroad Company, in all of which plaintiff had a one-sixth interest as aforesaid, but also to bonds of the said Railroad Company and a mill and lumber of the defendant at Piney, West Virginia, yet the plaintiff is informed and believes that the said property and assets of the said Beaty Lumber Company in connection with the stock and control of the said Railroad Company constituted and were the principal matters and things of value in exchange for which said 4,995 shares were issued to defendant; that plaintiff's said one-sixth interest was of much greater value than the amount of money received by him as aforesaid, from the defendant, namely, \$5,000. and the 100 shares of stock in the said

98 Raleigh Lumber Company, issued to him as aforesaid; and he is advised believes and avers that the defendant is liable to account to him for all of the moneys and property received by him for his own use and benefit for such of said shares of stock as he the defendant transferred as aforesaid, and for the value or proceeds of the share of stock retained by him as aforesaid; the defendant in such accounting to be allowed all just and equitable credits by reason of property other than that in which the plaintiff was interested having been transferred to the said Raleigh Lumber Company, in part consideration of said issue of 4,995 shares of stock and the facts as to such matters being within the knowledge of the defendant he should be required to disclose the same fully in his answer. In such accounting by the defendant the plaintiff is ready and willing to be charged with the sum of \$5,000. received by him in money from or through the defendant as aforesaid together with legal interest thereon; and with the value and proceeds of the 100 shares of stock in the Raleigh Lumber Company actually issued to plaintiff as aforesaid.

11. Plaintiff further charges that when defendant as aforesaid induced complainant to execute the aforesaid agreement and power of attorney (exhibit No. 5) he intentionally concealed from plaintiff all his knowledge of the sale which had then been already agreed upon between the two companies hereinbefore referred to and plaintiff alleges that it was the duty of defendant to inform him of the said agreement to sell and that he would not have consented to sell his interest in said Beaty Lumber Company upon the terms stated in said agreement, as defendant well knew if the facts within the knowledge of said defendant respecting the said agreement between the two companies had been made known to him, but on the contrary would have required and demanded one-sixth of the

99 consideration, to wit, one sixth of the consideration which was given and received for the entire stock and property of the Beaty Lumber Company and the Glade Creek and Raleigh Railroad Company, instead of \$10,000. of stock in the Raleigh Lumber Company and \$5,000. in money as stated in said agreement.

12. Plaintiff alleges that the defendant in negotiating the aforesaid deal or exchange with the Raleigh Lumber Company occupied a relation of trust towards plaintiff by reason of his being a director in and the active manager of and the owner of a majority of the stock of the Beaty Lumber Company of which plaintiff was a stockholder, and also by reason of the defendant being an agent of plaintiff to negotiate the sale of his interest in said Company to the best advantage; that plaintiff in executing the contract, a copy of which is exhibited with this bill, had the most implicit confidence in the good faith as well as the sound business judgment of the said defendant; that the said defendant made to plaintiff false representations of material facts relating to the Beaty Lumber Company, to wit, its insolvent condition, and made fraudulent concealment of his connection with the Raleigh Lumber Company, and that the sale of the stock of the Beaty Lumber Company to the Raleigh Lumber Company had already been negotiated before the said contract was executed, that the representations of the said defendant as to the *status* of the two companies was an inducing cause to the contract; that plaintiff had a right to rely on these representations and did rely on them, and was thereby induced to part with his large interest in the said Beaty Lumber Company for a grossly inadequate consideration, to wit, the sum of \$5,000. as the 100 shares of the Raleigh Lumber Company stock were already his under the terms of the sale between the Beaty Lumber Company and the Raleigh Lumber Company.

100 12 (a). In further explanation of the seeming delay of the plaintiff in bringing suit against the defendant in the premises, the plaintiff, says, that although, as alleged in the eighth paragraph of the bill, he made certain discoveries of fraud on the part of the defendant in May, 1906, yet it was not until April, 1907, that he became aware that the statements made by defendant in May, 1906, and later, referred to in the bill in this cause relative to the contract of sale executed by plaintiff, namely, that the same was a contract of sale by plaintiff to defendant, were false; that although his, plaintiff's, recollection of the contract was that it empowered or purported to empower defendant to act as his agent and attorney in fact, and to sell for him his interest in the Beaty Lumber Company, and while his recollection of the conversation and oral negotiations which led up to said contract were clear to the same effect as set forth in the seventh paragraph of the bill, yet he not only had retained no copy or duplicate of said contract but had never seen the same except at the time he signed it, and inasmuch as the defendant in May, 1906, and subsequently between that date and April, 1907, several times said to plaintiff and his attorney that the contract in his possession would show that he, defendant, was dealing directly with plaintiff as purchaser and not as his agent and that he

in fact was authorized by writings in his possession signed by plaintiff to purchase in his own right the interest of plaintiff in the Beaty Lumber Company, and also stated (see his letter of July 27th, 1907, Exhibit No. 7) that he had found a minute book which he alleged showed that he had acted fairly but which he never produced the plaintiff was constrained and induced to defer taking any action whatever against the defendant until defendant had had an opportunity to produce the said contract and writings which, as averred in the bill, he requested both orally and in writing that plaintiff

101 tiff would give him time to produce and explain; that although as alleged in the original bill plaintiff urged defendant to produce the original contract and made appointments with him for the purpose of inspecting the same, which defendant did not keep, between May 1906, and April, 1907, yet it was not until the last named month and year that the defendant produced what purported to be copies of the said contract and writings (being the same filed as exhibit No. 5). Therefore plaintiff avers that until April, 1907, he did not discover or know sufficient of the facts which had been concealed from him by the defendant and of the authority of the defendant to act in the premises to make it safe for proper for him to bring any suit or proceeding either to set aside the said contract or for accounting or other relief, so that in effect the discovery of the fraud dates from April, 1907. Plaintiff further states that even after the inspection by him of the papers purporting to be copies of the said contract and appended writings and from which, as he avers, it clearly appears that the defendant was constituted and appointed by plaintiff his agent and attorney to sell his holdings in the Beaty Lumber Company, he was not fully informed of certain material facts about the organization of the Raleigh Lumber Company which it would be necessary to establish and prove in case of suit against the said defendant. That accordingly after sending defendant the registered letter of May 20th, 1907, (exhibit No. 9 with original bill), plaintiff made further inquiries and investigations which necessarily consumed much time, and that after he had been advised by his local counsel that it would be necessary to bring suit in this jurisdiction as it is the place of defendant's residence, further time was lost because the attorney first consulted by him in this District after retaining the papers of plaintiff for

102 some weeks notified him that on account of other professional engagements he would be unable to take the case; that afterwards plaintiff employed another attorney of this District who advised that before bringing any suit the defendant be again notified and given a further opportunity to make an explanation as he had previously offered to do; that said attorney accordingly wrote defendant who sent in reply a message requesting a conference and making an appointment, this being in April, 1909, that defendant did not keep the appointment at the time, but notified plaintiff's attorney by telephone and messenger that he was obliged to go out of the District on business and requested that he await his return when he would make another appointment; that a similar postponement at defendant's request occurred again after which to wit, in June,

1909, said defendant called on plaintiff's attorney and the interview took place which is referred to in paragraph nine of the bill; that at said interview defendant stated that he would not in event of suit defend on the ground of any delay of plaintiff in bringing suit but would contest the suit on its merits; that as a result of this interview plaintiff's attorney advised plaintiff to make further inquiries as to the truth or correctness of certain matters brought forward by defendant, and also informed him what the latter had said about not making any defense on the ground of delay. Plaintiff accordingly made further inquiries and made a trip to Philadelphia (where for a considerable period the said Raleigh Lumber Company had its principal office) and had an interview in said City with one Logan M. Bullitt in the month of November, 1909, at which interview said Bullitt gave plaintiff information relative to the early history of the Raleigh Lumber Company which he believes and avers to be true, and among other matters informed plaintiff that he, Bullitt, did not put any money into the Raleigh Lum-

ber Company nor pay money for any of its stock, that the
103 incorporators other than himself were only nominally interested, were, as he expressed it "mere dummies," and did not pay, to the best of his knowledge, anything for their stock except perhaps the small per cent required by law to obtain the charter; that when the Company was being formed he knew that plaintiff was not aware of it, but that the defendant claimed to represent him, that defendant (although not an incorporator) and said Bullitt were the real organizers of the Raleigh Lumber Company and agreed at the time of its formation that each should have a one-half interest in the same; that defendant contributed or "put in" the stock and property of the Beaty Lumber Company and his mill and some lumber at Piney, and said Bullitt on his part negotiated a loan from a Philadelphia bank for fifty thousand dollars (\$50,000.) on a note which he and defendant indorsed for working capital, and that it was agreed that the Raleigh Lumber Company should cut timber on certain lands controlled by said Bullitt in West Virginia but this right was terminable at his will and was hence at the time of little value, although afterwards a formal lease was entered into, and that he ultimately, through legal proceedings instituted in Philadelphia, had a settlement with defendant and closed his connection with the company. Plaintiff says that he had never before been able to meet the said Bullitt and that the facts communicated to plaintiff by him are material to his, plaintiff's case and he avers that until said interview with said Bullitt he was not informed of all of the facts bearing upon the controversy between himself and the defendant which were essential to be known by him and his counsel before framing a bill of complaint.

That as to the period which elapsed between the execution of the contract of December 21st, 1899, and the first discovery in May, 1906, of facts tending to show that defendant had not treated plaintiff fairly, but had defrauded him as alleged in paragraph eight of the bill, plaintiff says that he had no reason during all of
104 said period or to doubt and did not doubt that defendant had made a sale of his, plaintiff's, interest in the Beaty Lumber

Company to the Raleigh Lumber Company in accordance with the terms of the contract of December 21, 1899, and had sold the same Company his own holdings on the same basis, that in reply to inquiries about details of the sale the defendant at some time not long after the sale stated that his and plaintiff's holdings (constituting the assets and property of the Beaty Lumber Company and Glade Creek and Raleigh Lumber Company) had been sold by him to the Raleigh Lumber Company on the same basis; Plaintiff never saw and had no knowledge of the records of either Company which related to the sales of the Beaty Lumber Company stock or the formation of the Raleigh Lumber Company until May, 1906; that it was not until after Mr. Smith had become President of the Company and at the meeting referred to in May, 1906, that the plaintiff received information which led him to make inquiries of Mr. Smith and others as averred in the bill. To that time he had had no reason to entertain any suspicion or doubt that the statements of the defendant in respect to his stockholdings and transactions were true. Plaintiff further avers that the books of the Raleigh Lumber Company were at the office in Philadelphia until shortly before the time mentioned (as he is informed and believes) and that he was never at the Philadelphia office, while the minutes of the Beaty Lumber Company had been in the possession of the defendant and he stated to plaintiff that the old minute book of the Beaty Lumber Company and the stock book were lost or misplaced.

12 (b). The Glade Creek and Raleigh Railroad Company referred to in the original bill of complaint was in large part constructed by J. R. Beaty and Company and was completed by the Beaty Lumber Company which took the same over when it bought the holdings of J. R. Beaty and Company, the entire cost of construction being more than \$100,000. That the said railroad com-

pany was an asset of and belonged to the said J. R. Beaty
105 and Company and afterwards to the Beaty Lumber Company
and that at the time of the sale to the Raleigh Lumber Company the defendant and the plaintiff were interested in the said Railroad Company in the same proportion as they were interested in the Beaty Lumber Company; that plaintiff knows of no bonds of the Railroad Company except the same bonds mentioned amounting in all to \$50,000., which incumbered the property of the Beaty Lumber Company as well as of the Railroad Company and which as he is informed and believes were issued in the name of the Railroad Company, and were ultimately paid. To the best of plaintiff's information and belief the defendant was the owner of no bonds of the said Railroad Company at the time of the transfer and sale to the Raleigh Lumber Company. That the designation in said copy of contract of December 21, 1899, of plaintiff's interest in said Railroad as a "\$500. interest" is an evident error, and that through color of said contract and power of attorney defendant acquired all interest of plaintiff in said Railroad Company and transferred the same to the Raleigh Lumber Company, deriving benefit to himself by the transaction.

12(c). Plaintiff further alleges that although as hereinbefore stated the defendant was the agent and attorney of plaintiff to sell yet he

became the purchaser of the interest and holdings of plaintiff in the said Beaty Lumber Company and Glade Creek and Raleigh Railroad Company to his great profit and to the great injury of plaintiff; that while plaintiff was led to suspect that such was the case in May, 1906, yet he was unable to obtain proof of that fact until a much later date, to wit much less than three years before bringing this suit, although he made diligent efforts to investigate and discover the facts from the time that his suspicions were first aroused, and he is advised and avers that he is entitled to the aid of

106 a court of equity to have said contract of sale of December 21, 1899, and said purchase by defendant of the holdings of plaintiff, which, in violation of the terms and spirit thereof, he effected as aforesaid, rescinded and set aside; that in equity and good conscience the defendant should be held to have taken and received in trust for plaintiff all of the stock in the Raleigh Lumber Company which he received in exchange for the interest and stock in said Beaty Lumber Company and said Railroad Company which he had acquired from the plaintiff, subject, however, in any accounting or settlement to full credit being given defendant for all stock and proceeds of stock and moneys received by plaintiff in the premises as set forth in the (original) bill.

13. The aforesaid Raleigh Lumber Company having acquired the property and business of the Beaty Lumber Company entered upon and carried on a large business in cutting lumber, marketing lumber, etc., until the latter part of the year 1906, at or about which time negotiations for the sale of the assets and stock of said Company to the W. M. Ritter Lumber Company culminated in an agreement which was soon afterwards carried into effect, being the sale of December 22nd, 1906, hereinbefore referred to (see paragraph eight of this Bill), whereby all the stockholders of said Raleigh Lumber Company (plaintiff who had at that time retained the 100 shares of said stock acquired by him as hereinbefore set forth and the defendant being among the stockholders) sold all of the shares of stock of said Raleigh Lumber Company, to wit, 5,000 shares of \$100. each unto W. M. Ritter (President of said W. M. Ritter Lumber Company) for a consideration of \$337,500. payable partly in cash and partly in notes secured by deed of trust upon real estate, etc., and which agreement provided that by the sale of the stock certain personal and real property of the Raleigh Lumber Company should not pass unto the said Ritter but should be retained

107 by the said stockholders who were also permitted by said agreement to retain all of the cash in hand and in back bills and accounts receiveable and other choses in action of said Raleigh Lumber Company and title to all of said retained property, real and personal, was by proper conveyance and agreements vested in one George H. Smith, of Chillicothe, Ohio, in trust for stockholders to realize upon said Raleigh Lumber Company's property and with power of sale, etc., and in trust from time to time to distribute the funds received and collected by him after paying certain debts of the company, to and among the stockholders at the time of the transfers of stock unto said Ritter namely, defendant 1700 shares,

plaintiff 100 shares, George H. Smith, 1475 shares, T. J. Morgan, 1425 shares, Harry Allen 200 shares, C. F. Smith, 100 shares, making a total of 5000 shares all in accordance with a contract in writing under seal executed by the stockholders and the said George H. Smith, dated the 22nd day of December, 1906, duplicate of which is herewith filed marked Plaintiff's exhibit No. 11, being the same exhibit of that number referred to in paragraph nine of this Bill.

14. Said George H. Smith, who is a non-resident and for that reason is not made a party to this Bill accepted said trust and acting thereunder has collected and converted into money a large part of the choses in action and other property real and personal held by him as such trustee and accounted for the same to the beneficiaries of said trust and distributed to and among them considerable sums of money, and the said defendant has received from said trustee as one of said distributees large amounts and which plaintiff is advised and believes and avers defendant should be held to have received as trustee for plaintiff, and he prays that he be required to account to him and pay over to him such portion of said payments
108 and moneys received or to be received by him from said trustee as his interest therein may appear to the Court.

15. Plaintiff further states that he executed the contract under seal of December 22nd, 1906, Exhibit No. 11, because he believed as he still believes that the sale to said Ritter therein referred to was to the interest and advantage of all of the stockholders of said Company and because he was advised and believed that by so doing he would not in any manner impair or prejudice his right to have a full settlement with and accounting by defendant, because he relied upon the assurances of the President of the Raleigh Lumber Company, hereinbefore referred to, which were made in the interest of all of the other stockholders including the said defendant.

Wherefore the plaintiff being without adequate remedy at law, bring this suit in equity, where matters of the sort are properly cognizable and prays as follows, namely:

Prayers.

1. That the United States writ of subpœna may issue addressed to the defendant Azel Ford commanding him to appear and true answer make to the exigencies of this Bill, but not under oath, answer to this Bill under oath being hereby expressly waived.

2. That the Court will pass a decree directing and requiring the defendant to account under the direction of the Court to the plaintiff for all stock and proceeds of sales of stock in the Beaty Lumber Company and in the Raleigh Lumber Company and in the Glade Creek and Raleigh Railroad Company which rightfully belonged to plaintiff, or which should have been paid or issued to him, but
109 which came into the hands or control of the defendant, and all profits and dividends which the said defendant has received on said stock from the Raleigh Lumber Company, or George H. Smith, trustee, or from any other source; and that after

allowing said defendant all just and proper credits, a decree for the balance may be rendered in favor of plaintiff, together with the costs of this suit.

2½. Or that in the alternative the Court will by its decree direct the defendant to deliver up for cancellation the contract of December 21, 1899, and power of attorney thereunto appended, and will decree that the sale made to himself by the defendant under color of said contract of the interest and holdings of the plaintiff in the Beaty Lumber Company and the Glade Creek and Raleigh Railroad Company be rescinded and set aside, and that the defendant be deemed and held as trustee of the plaintiff for all stock and proceeds of stock and dividends which he received from the Raleigh Lumber Company and from any other source as a result of the sale of the said interest and stock holdings of plaintiff which defendant acquired as aforesaid and then sold and transferred as his own property to the Raleigh Lumber Company, and that so far as practicable the Court will restore the plaintiff to his former *status* in reference to his interest and stockholdings by requiring the defendant to transfer and deliver to him such stock as he may have in his possession or subject to his control which rightfully belongs to the plaintiff, and accounting as trustee of and for the residue, ~~after allowing the~~ defendant credit for all stock, money and proceeds of stock which the plaintiff has received from the defendant or otherwise as a result of the transfer to plaintiff of the 100 shares of stock of the Raleigh Lumber Company in January, 1900, as alleged in the Bill, and also after allowing defendant credit with interest for the sum of \$5,000. received by plaintiff from defendant at or shortly after the same time.

110 3. That for the purpose of this suit all necessary references to the Auditor of this Court and to any examiner thereof may be ordered and had and all necessary accounts may be taken and stated.

4. That the plaintiff may have such other and further final and general relief as the nature of the case may require.

L. D. GEORGE.

GEO. FRANCIS WILLIAMS,
Attorney for Plaintiff.

W. E. ENNIS,
Of Counsel.

[Endorsed:] No. 2194. Lewis Dudley George, Appellant, vs. Azel Ford. Addition to Record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Sep. 13, 1910. Henry W. Hodges, Clerk.

Endorsed on cover: District of Columbia, Supreme Court. No. 2194. Lewis Dudley George, appellant, vs. Azel Ford. Court of Appeals District of Columbia. Filed Jul- 22, 1910. Henry W. Hodges, Clerk.

